SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1966

No. 13(1)

EDWARD J. GARRITY, ET AL., APPELLANTS,

vs.

NEW JERSEY.

APPEAL FROM THE SUPREME COURT OF NEW JERSEY

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IN THE SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION

Docket No. A-228-63

STATE OF NEW JERSEY,

vs.

HELEN B. NAGLEE, EDWARD J. GARRITY, and EDWARD VIRTUE, Defendants-Appellants.

Criminal Action

On Appeal from the Camden County Court

Joint Appendix

[fol. 1]

INDICTMENT No. 327-62

The Grand Jurors of the State of New Jersey, for the County of Camden upon their oaths, Present That Helen B. Naglee, Violations Clerk and Court Clerk of the Municipal Court; Edward J. Garrity, Chief of Police and Edward Virtue, duly sworn police officer; all of the Borough of Bellmawr, County of Camden aforesaid, and within the jurisdiction of this court during the year 1959 and up to and including June 29, 1961 did commit the crime of conspiracy in that, then and there, they unlawfully conspired together to pervert and obstruct the due administration of the motor vehicle traffic laws of this state in that they did unlawfully, knowingly and corruptly agree to dispose of certain traffic offense cases where motorists were charged with operating motor vehicles while under the influence of intoxicating liquor in violation of R. S. 39:4-50, by altering and falsifying the summonses and complaints made by the arresting officers, thereby changing the nature of the offense from one of "Driving While Under the Influence of Intoxicating Liquor" to one involving a lesser penalty, whereby the defendants would not be prosecuted on the

original charges, but would be prosecuted, instead, under substituted charges; and in furtherance of said conspiracy would then cause entries to be made in the dockets of the Municipal Court of the Borough of Bellmawr certifying that the defendants had been convicted of such substituted charges, without making a record in the dockets of a charge of driving under the influence of intoxicating liquor; and would then, in such cases, cause receipts to be made in the name of said Municipal Court under the hand of Helen B. Naglee, Court Clerk and Clerk of the Violations Bureau [fol. 2] as aforesaid, said receipts to be issued under the direction and sanction of the aforesaid Edward J. Garrity, and were to acknowledge receiving fines in satisfaction of judgments of conviction of the said substituted offenses, whereas, in truth, no hearings were to be held nor judgments of conviction entered in open court in any of said matters; and, further, in some cases were to require such persons who had been originally charged with driving while under the influence of intoxicating liquor to post either cash as bail conditioned for their later appearance, or in amounts represented by said Edward J. Garrity as being sufficient for satisfying fines or costs which could or would be imposed later; whereas in truth no court hearings were intended to be held and the amounts of the fines and costs as now shown in the dockets of the Borough of Bellmawr were in amounts fixed arbitrarily by said Edward J. Garrity, although such amounts required to be deposited would be larger in some cases than the amounts so fixed; and in furtherance of said conspiracy to fail to account and pay to said offenders, or the Borough of Bellmawr, said balances remaining but instead, in furtherance of said conspiracy to divert, apply and appropriate same to uses not authorized or sanctioned by law;

Overt Acts

And that in execution of the aforesaid conspiracy and to effect the object thereof the following overt acts were done:

1. On November 9, 1960, Edward Virtue, then and there being a duly sworn police officer of the Borough of Bell-[fol. 3] mawr, County of Camden, New Jersey did arrest and make a complaint against one Robert A. Franklin, charging him with Operating a Motor Vehicle While Under the Influence of Intoxicating Liquor, contrary to R. S. 39:4-50, said complaint bearing number 5759 and issued out of the Municipal Court of the Borough of Bellmawr; and

Between the date aforesaid and June 29, 1961, Helen B. Naglee, then being both Violations Clerk and Municipal Court Clerk of the Borough of Bellmawr, did alter and falsify said complaint whereby the charge made was changed to one of Careless Driving, R. S. 39:4-97, by striking out the offense charged and substituting the offense of Careless Driving; and at or about the same time the said Edward Virtue did make a complaint against said Robert A. Franklin charging him with being a Disorderly Person in violation of N. J. S. 2A:170-29; and

Between the dates aforesaid the said Helen B. Naglee did sign and issue out of said court receipt number 16314, dated November 30, 1960, to and in the name of said Robert A. Franklin, acknowledging the payment of $15.00 composed of $10.00 fine and costs of $5.00 purporting to be in satisfaction of judgment of conviction of Careless Driving as aforesaid; and

The said Helen B. Naglee did make in the Criminal Docket of the said borough an entry showing the receipt of $105.00 in satisfaction of a Judgment of Conviction for Disorderly Conduct; and

Between the dates aforesaid, the said Edward J. Garrity, did sign receipt dated November 29, 1960, out of said Violations Bureau of said borough to and in the name of Robert A. Franklin, being the said Robert A. Franklin aforesaid, acknowledging receipt of the amount of $190.00 as cash bail conditioned for the appearance of said Robert A. [fol. 4] Franklin before the Municipal Court of said borough on November 30 next; and following same said amount

of $190.00 came into the possession of one Edward J. Garrity aforesaid; and

Following the disbursement by the said Edward J. Garrity to the Borough of Bellmawr of the amounts fixed in the receipts issued for the offenses of Careless Driving and Disorderly Conduct as aforesaid, there remained a balance of $70.00 in the hands of said Edward J. Garrity which sum he has ever since failed to dispose of according to law.

2. On June 2, 1960, Edward Virtue, then and there being a duly sworn police officer of the Borough of Bellmawr, County of Camden, New Jersey, did arrest and make a complaint against one John Gregal, charging him with Operating a Motor Vehicle While Under the Influence of Intoxicating Liquor, contrary to R. S. 39:4-50, said complaint bearing number 5611 and issued out of the Municipal Court of the Borough of Bellmawr; and

Between the date aforesaid and June 29, 1961, Helen B. Naglee, then being both Violations Clerk and Municipal Court Clerk of the Borough of Bellmawr, did alter and falsify said complaint whereby the charge made was changed to one of Careless Driving, R. S. 39:4-97, by striking out the offense charged and substituting the offense of Careless Driving; and at or about the same time the said Edward Virtue did make a complaint against said John Gregal charging him with being a Disorderly Person in violation of N. J. S. 2A:170-29; and

Between the dates aforesaid the said Helen B. Naglee did sign and issue out of said court receipt number 15646, dated June 21, 1960, to and in the name of John Gregal, acknowledging the payment of $15.00 composed of $10.00 fine and [fol. 5] costs of $5.00 purporting to be in satisfaction of judgment of conviction of Careless Driving as aforesaid; and

The said Helen B. Naglee did make in the Criminal Docket of the said borough an entry showing the receipt of $55.00 on June 22, 1960, in satisfaction of a Judgment of Conviction for Disorderly Conduct; and

On or about June 1, 1960, the said John Gregal did deposit with said Edward J. Garrity the sum of $150.00 as bail; and

Following the disbursement by the said Edward J. Garrity to the Borough of Bellmawr of the amounts fixed in the receipts issued for the offenses of Careless Driving and Disorderly Conduct as aforesaid, there remained a balance of $80.00 in the hands of said Edward J. Garrity which sum he has ever since failed to dispose of according to law.

3. On May 28, 1960, Edward Virtue, then and there being a duly sworn police officer of the Borough of Bellmawr, County of Camden, New Jersey, did arrest and make a complaint against one Linwood Finney, charging him with operating a Motor Vehicle While Under the Influence of Intoxicating Liquor, contrary to R. S. 39:4-50, said complaint bearing number 5537 and issued out of the Municipal Court of the Borough of Bellmawr; and

Between the date aforesaid and June 29, 1961, Helen B. Naglee, then being both Violations Clerk and Municipal Court Clerk of the Borough of Bellmawr, did alter and falsify said complaint whereby the charge made was changed to one of Careless Driving, R. S. 39:4-97, by striking out the offense charged and substituting the offense of Careless Driving; and at or about the same time the said Edward Virtue did make a complaint against said Linwood Finney [fol. 6] charging him with being a Disorderly Person in violation of N. J. S. 2A:170-29; and

Between the dates aforesaid the said Helen B. Naglee did sign and issue out of said court receipt number 15637, dated June 20, 1960, to and in the name of Linwood Finney, acknowledging the payment of $15.00 composed of $10.00 fine and costs of $5.00 purporting to be in satisfaction of judgment of conviction of Careless Driving as aforesaid; and

The said Helen B. Naglee did make in the Criminal Docket of the said borough an entry on June 22, 1960, showing the receipt of $55.00 in satisfaction of a Judgment of Conviction for Disorderly Conduct; and

On or about June 1, 1960, the said Linwood Finney did deposit with said Edward J. Garrity the sum of $150.00 as bail conditioned for the appearance of said Linwood Finney before the Municipal Court of said borough on June 22 next; and

Following the disbursement by the said Edward J. Garrity to the Borough of Bellmawr of the amounts fixed in the receipts issued for the offenses of Careless Driving and Disorderly Conduct as aforesaid, there remained a balance of $80.00 in the hands of said Edward J. Garrity which sum he has ever since failed to dispose of according to law.

4. On January 10, 1960, Edward Virtue, then and there being a duly sworn police officer of the Borough of Bellmawr, County of Camden, New Jersey, did arrest and make a complaint against one William R. Snyder, charging him with Operating a Motor Vehicle While Under the Influence of Intoxicating Liquor, contrary to R. S. 39:4-50, said complaint bearing number 5311 and issued out of the Municipal Court of the Borough of Bellmawr; and

[fol. 7] Between the date aforesaid and June 29, 1961, Helen B. Naglee, then being both Violations Clerk and Municipal Court Clerk of the Borough of Bellmawr, did alter and falsify said complaint whereby the charge made was changed to one of Careless Driving, R. S. 39:4-97, by striking out the offense charged and substituting the offense of Careless Driving; and at or about the same time the said Edward Virtue did make a complaint against said William R. Snyder charging him with being a Disorderly Person in violation of N. J .S. 2A:170-29; and

Between the dates aforesaid the said Helen B. Naglee did sign and issue out of said court receipt number 14814, dated January 20, 1960, to and in the name of William R. Snyder, acknowledging the payment of $15.00 composed of $10.00 fine and costs of $5.00 purporting to be in satisfaction of judgment of conviction of Careless Driving as aforesaid; and

The said Helen B. Naglee did make in the Criminal Docket of the said borough an entry on January 20, 1960,

showing the receipt of $105.00 in satisfaction of a Judgment of Conviction for Disorderly Conduct; and

Between the dates aforesaid, the said Edward J. Garrity, did sign receipt dated January 18, 1960, out of said Violations Bureau of said borough to and in the name of William R. Snyder, being the said William R. Snyder aforesaid, acknowledging receipt of the amount of $225.00 as cash bail conditioned for the appearance of said William R. Snyder before the Municipal Court of said borough on January 20 next; and

Following the disbursement by the said Edward J. Garrity to the Borough of Bellmawr of the amounts fixed in the receipts issued for the offenses of Careless Driving and Disorderly Conduct as aforesaid, there remained a balance of [fol. 8] $105.00 in the hands of said Edward J. Garrity which sum he has ever since failed to dispose of according to law.

5. On October 4, 1959, Edward Virtue, then and there being a duly sworn police officer of the Borough of Bellmawr, County of Camden, New Jersey, did arrest and make a complaint against one Robert T. Killian, charging him with Operating a Motor Vehicle While Under the Influence of Intoxicating Liquor, contrary to R. S. 39:4-50, said complaint bearing number 5157 and issued out of the Municipal Court of the Borough of Bellmawr; and

Between the date aforesaid and June 29, 1961, Helen B. Naglee, then being both Violations Clerk and Municipal Court Clerk of the Borough of Bellmawr, did alter and falsify said complaint whereby the charge made was changed to one of Passing Regulation, R. S. 39:4-85, by striking out the offense charged and substituting the offense of Passing Regulation; and at or about the same time the said Edward Virtue did make a complaint against said Robert T. Killian charging him with being a Disorderly Person in violation of N. J. S. 2A:170-29; and

Between the dates aforesaid the said Helen B. Naglee did sign and issue out of said court receipt number 14384, dated October 16, 1959, to and in the name of Robert T. Killian,

acknowledging the payment of $10.00 purporting to be in satisfaction of Judgment of Conviction of Passing Regulation as aforesaid; and

The said Helen B. Naglee did make in the Criminal Docket of the said borough an entry on October 14, 1959, showing the receipt of $55.00 in satisfaction of a Judgment of conviction for Disorderly Conduct; and

Between the dates aforesaid the said Helen B. Naglee did sign and issue out of said court receipt dated October 14, [fol. 9] 1959, to and in the name of Robert T. Killian, being the said Robert T. Killian aforesaid, acknowledging receipt of the amount of $180.00 as cash bail conditioned for the appearance of said Robert T. Killian before the Municipal Court of said borough on October 21, next; and following same said amount of $180.00 came into the possession of one Edward J. Garrity aforesaid; and

Following the disbursement by the said Edward J. Garrity to the Borough of Bellmawr of the amounts fixed in the receipts issued for the offenses of Passing Regulation and Disorderly Conduct as aforesaid, there remained a balance of $125.00 in the hands of said Edward J. Garrity which sum he has ever since failed to dispose of according to law.

6. On November 29, 1959, Edward Virtue, then and there being a duly sworn police officer of the Borough of Bellmawr, County of Camden, New Jersey, did arrest and make a complaint against one Phyllis M. Zippel, charging her with Operating a Motor Vehicle While Under the Influence of Intoxicating Liquor, contrary to R. S. 39:4-50, said summons bearing number 5291 and issued out of the Municipal Court of the Borough of Bellmawr; and

Between the date aforesaid and June 29, 1961, Helen B. Naglee, then being both Violations Clerk and Municipal Court Clerk of the Borough of Bellmawr, did alter and falsify said complaint whereby the charge made was changed to one of Careless Driving, R. S. 39:4-97, by striking out the offense charged and substituting the offense of Careless Driving; and

The said Phyllis M. Zippel did not appear in court in response to the summons served upon her to appear and answer to said charge of Driving While Under the Influence of Intoxicating Liquor but as by the records in said Municipal [fol. 10] Court receipt issued in a matter entitled State v. Phyllis M. Zippel in the amount of $15.00 in satisfaction of a charge of Careless Driving, R. S. 39:4-97, signed by Helen B. Naglee, Clerk, dated December 4, 1959, receipt number 14652.

7. On February 7, 1960, Edward Virtue, then and there being a police officer of the Borough of Bellmawr, County of Camden, New Jersey, did arrest and make a complaint against one Herbert W. Brining, charging him with Operating a Motor Vehicle While Under the Influence of Intoxicating Liquor, contrary to R. S. 39:4-50, said complaint bearing number 5366 and issued out of the Municipal Court of the Borough of Bellmawr; and

Between the date aforesaid and June 29, 1961, Helen B. Naglee, then being both the Violations Clerk and Municipal Court Clerk of the Borough of Bellmawr, did alter and falsify said complaint whereby the charge made was changed to one of Careless Driving, R. S. 39:4-97, by striking out the offense charged and substituting the offense of Careless Driving; and

Between the dates aforesaid the said Helen B. Naglee did sign and issue out of said court receipt number 14953, dated February 16, 1960, to and in the name of Herbert W. Brining, acknowledging payment of $15.00 composed of $10.00 fine and costs of $5.00 purporting to be in satisfaction of judgment of conviction of Careless Driving as aforesaid; and

The said Herbert W. Brining did deposit with said Helen B. Naglee cash bail in the amount of $35.00; and following same said amount of $35.00 came into the possession of one Edward J. Garrity aforesaid; and

Following the disbursement by said Edward J. Garrity to the Borough of Bellmawr of the amounts fixed in the

[fol. 11] receipt issued for the offense of Careless Driving as aforesaid, there remained a balance of $20.00 in the hands of said Edward J. Garrity which sum he has ever since failed to dispose of according to law.

8. On March 30, 1960, Edward Virtue, then and there being a police officer of the Borough of Bellmawr, County of Camden, New Jersey, did arrest and make a complaint against one Joseph H. Scott, charging him with Operating a Motor Vehicle While Under the Influence of Intoxicating Liquor, contrary to R. S. 39:4-50, said complaint bearing number 5451 and issued out of the Municipal Court of the Borough of Bellmawr; and

Between the date aforesaid and June 29, 1961, Edward Virtue, a police officer of the Borough of Bellmawr, did alter and falsify said complaint whereby the charge made was changed to one of Careless Driving, R. S. 39:4-97, by striking out the offense charged and substituting the offense of Careless Driving; and at or about the same time the said Edward Virtue did make a complaint against said Joseph H. Scott charging him with being a Disorderly Person in violation of N. J. S. 2A:170-29; and

The Traffic Dockets of the Municipal Court of the said Borough of Bellmawr show an entry of a penalty of $15.00 paid by Joseph H. Scott in satisfaction of a Judgment of Conviction for Careless Driving; and

Further, between the dates aforesaid, the said Helen B. Naglee did also sign and issue on April 6, 1960, a receipt bearing number 15193, out of said court, in the name of said Joseph H. Scott, acknowledging the payment of $105.00 in satisfaction of a Judgment of Conviction for Disorderly Conduct; and

Between the dates aforesaid, the said Joseph H. Scott [fol. 12] did deposit with the said Helen B. Naglee the sum of $250.00 as bail and later the said sum of $250.00 came into the possession of Edward J. Garrity aforesaid; and

Following the disbursement by the said Edward J. Garrity to the Borough of Bellmawr of the amounts fixed in the

receipts issued for the offenses of Careless Driving and Disorderly Conduct as aforesaid, there remained a balance of $130.00 in the hands of said Edward J. Garrity which sum he has ever since failed to dispose of according to law, contrary to the provisions of N. J. S. 2A:98-1 and 2A:98-2, and against the peace of this State, the Government and dignity of the same.

Norman Heine, County Prosecutor.

A True Bill: Gordon A. Carrigan, Jr., Foreman.

[fol. 13]

Transcript of Testimony—April 29, 1963

Camden, New Jersey.

Before: Hon. Anthony C. Mitchell, J. C. C.

APPEARANCES:

James G. Aiken, Esq., Assistant Prosecutor for the State of New Jersey.

Angelo D. Malandra, Esq., Attorney for Defendants.

(Jury impaneled and sworn.)

The Court: All right gentlemen, you may proceed.

• • • • • • •

[fol. 197]

(The following takes place out of the presence of the jury.)

ARGUMENT OF COUNSEL RE ADMISSIBILITY OF STATEMENTS

The Court: Now gentlemen, I think we've reached the stage of the proceeding where there seems to be some talk

concerning the admissibility of certain statements made by [fol. 198] one or more or perhaps all of the defendants on two separate occasions. I believe on one occasion, some statements were made to Mr. Rigg and who was the attorney I think investigating the matter by the attorney general or the Supreme Court in the very beginning, and I think the second one was a statement taken by the Prosecutor's office.

Mr. Aiken: That is correct, Your Honor.

The Court: Through Prosecutor Kaplan, as I understand it further. There are two statements made by each of the defendants, is that correct?

Mr. Aiken: That is correct.

The Court: One to Mr. Rigg, and the other to Mr. Kaplan. The admissibility, therefore, is to be decided as a matter of law by the court, and then after that, evidence concerning the voluntariness of the stated statements in front of the jury. This procedure will have to do with the admissibility of the statements as far as the law is concerned. You may proceed.

Mr. Aiken: I call Mr. Garifo.

[fol. 199] LAWRENCE GARIFO, being first duly sworn, testifies as follows:

Direct examination.

By Mr Aiken:

Q. Mr. Garifo, you are a certified court stenographer in the courts of New Jersey?

A. Yes.

Q. And you have been for some years?

A. Yes sir.

Q. Do I understand, Mr. Garifo, that on Friday, November 10th, 1961, you were called upon to take certain state-

ments in the Municipal Building in the Borough of Bellmawr as a certified court reporter?

A. Yes sir.

Q. And, did you take those certain statements at that time and place?

A. Yes.

Q. And what method did you use to take the statements?

A. Stenotype machine.

Q. And subsequent to your taking those statements, did you transcribe your stenotype notes?

A. Yes sir.

Q. I show you what I think is the original and ask you whether or not that is the original transcript that you made of the statements taken that day?

A. Yes sir.

Q. Now, will you tell us whose statements you took that day?

A. The following: Theodore Francis Jeffers, Thomas [fol. 200] Sears, Edward Virtue, Frank Romano, Helen B. Naglee, and Chief Edward J. Garrity.

Q. I might interrupt to say to the court that I am only interested in the statements of the defendant.

The Court: Statements of the defendant, that's correct.

Q. Now, can you tell us very briefly, Mr. Garifo, what were the preliminary arrangements made prior to taking the statements, how were you called in to the matter and what did you do when you got to Bellmawr and so on?

A. Well, at the time I was an official shorthand reporter employed by The State of New Jersey and I was ordered by Mr. Newman through the Supervisor at the time to go to Bellmawr and report these statements with Mr. Rigg.

Q. Now, do you recall what time of the day you got to Bellmawr on the date you took the statements in question?

A. Approximately ten minutes to nine.

Q. And where did you go when you got there?

A. To the Municipal Building.

Q. In what room in the Municipal Building?

A. Well, there's a police station on one side and municipal court on the other side, just in the lobby.

Q. And, did you see or meet someone there?

A. Mr. Rigg.

Q. What did you and Mr. Rigg do after that?

A. I believe at that time we proceeded to the fire building.

Q. And did you take statements actually in what you refer to as the fire building?

A. Yes.

[fol. 201] Q. And who did you proceed over to the fire building with?

A. Mr. Rigg.

Q. Was any of the defendants present when you went over there?

A. No sir, I don't believe so.

Q. All right, where were the defendants when you first saw them?

A. Well, I saw them as they were brought in one at a time.

Q. You didn't see them prior to your actually starting to take the statements?

A. No sir.

Q. Now, I think that the first one of the defendants in this case that you took was Mr. Virtue?

A. That's correct.

Q. Now, after you transcribed your notes into the form that you now have in front of you, did you check your transcript that you have in front of you against the notes that you took originally?

A. Yes, well, I dictated the notes as they appear in the transcript.

Q. You dictated into a machine or to a girl?

A. No, into a Stenorette.

Q. From your original notes?

A. Yes.

Q. And then who actually ran off the typewritten transcript?

A. My transcriber.

Q. And after your transcriber ran off the transcript from the dictated transcript from your notes, did you check the transcript against your original notes?

A. I proof read it, proof read the original.

[fol. 202] Q. You mean by proof reading by comparison with the original notes?

A. No sir.

Q. What did you proof read it from?

A. I just proof read it for any glaring mistakes.

Q. Now, when Mr. Virtue's statement was taken, who was present?

A. Mr. Rigg, Mr. Virtue, and myself.

Q. Was Mr. Virtue given any kind of a warning concerning his rights?

A. Preliminary statement by Mr. Rigg, yes.

Q. Can you tell us what that preliminary statement was?

A. From memory?

Q. No, from the transcript.

A. Page 62, I think it is, the questioning is by Mr. Rigg and his question, "As you know by now, detective, I am working under a Supreme Court order issued last June directing me to investigate certain irregularities in the handling of motor vehicle matters in the Municipal Court here in Bellmawr, together with various persons having any connection with the court, including the police department. That is why I scheduled this day, to ask you questions pertaining to this investigation.

Before I do, I want to advise you anything you say must be voluntarily, of your own free will, without threats or coercion or promise or reward and anything you do say may be used against you or any person in a subsequent criminal proceeding or proceedings in the courts of our state.

You do have under our statutes, as you may know, a privilege to refuse to disclose any matters which may tend to incriminate you; however, if you make such a disclosure with knowledge of this right and without coercion, you [fol. 203] thereby waive this right or privilege with regard to any phase of this investigation.

This right or privilege that you have is limited to the extent that you as a police officer, when sworn and asked questions pertaining to your office and your conduct therein, if you refuse to answer, you then may be subject to a proceeding to have you removed from the department."

Mr. Malandra: This is where I would like to enter an objection, to this statement. If Your Honor pleases, this is on the ground that the statement with the admonition as given by Mr. Rigg, could not thereafter be voluntary. You will note that the statement is completely void of any remark concerning the right of this defendant to have counsel. There is no remark whatsoever concerning counsel. Secondly, may it please the court, you will note that the latter part, the last statement made by Mr. Rigg is that this right or privilege that you have is limited to the extent that you as a police officer, when sworn and asked questions pertaining to your office and your conduct therein, if you refuse to answer, you may then be subject to a proceeding to have you removed from the department. Now, as I say, Your Honor, that this is not advising the defendant of his constitutional right, by saying to him if you do not cooperate, you will be removed from the police force. Now, there is your choice. Either come on or get out. Now, under those circumstances, may it please the court, I cannot see how this statement can be voluntary.

The Court: I'll hear you, Prosecutor.

Mr. Malandra: I would like to add, may it please the court, that this is not an ordinary statement. This is more [fol. 204] or less like an inquisition by the Attorney General of the State of New Jersey, waiving a Supreme Court flag. Now, Your Honor please, under those circumstances, I can't see how it could be voluntary, anything that he said after that.

Mr. Aiken: Your Honor, I think the admonition contained in the statement of rights by Mr. Rigg is quite required, as a matter of fact, I believe it to be required by our statutes and I would like to call the court's attention

to 2-A:8771.1, I think it is, but anyway, that is the Statute, Your Honor, as I understand it, requiring this warning to be given because it also requires that if a public official does not testify or give his statements that proper proceedings, he is subject to removal from office, or whatever it happens to be. And, I think that if the warning had not been given, then the defendant would be in the position of coming in and saying, well, I wasn't warned of that situation, and I should've been. So that he can play it either way, if he desires, and obviously that is not the intent of the statute.

Mr. Malandra: If Your Honor please, I argue that a little bit differently, that statute says that if a police officer refuses to testify by taking the fifth amendment, he subjects himself to being chased out of the department. That's got nothing to do with this, because if he refused to take it, the next procedure, not this one, the next proceeding would be to take him out, but he would certainly have a right to refuse here. This was given as a threat. I'd like to add, Your Honor, that in the revised rules of New Jersey courts, 3:2-3, where the rule is that even a magistrate must say to a defendant, you have a right to counsel, and you [fol. 205] have the right to counsel from the very beginning, and if you don't have counsel, we'll get one for you. We'll pay if you can't pay all of this. Now, certainly, if a lowly magistrate must do that according to the court rules, I should think that the chief law enforcement officer of our state ought to use it.

The Court: You mean the Assistant to the Chief Law Enforcement.

Mr. Malandra: He's the chief when he's there.

Mr. Aiken: While we're there, the case of State vs. Smith, 32 New Jersey, quite a lengthy case—

The Court: I am very well acquainted with it but refresh my memory.

Mr. Aiken: 32 N. J., 501, in that case it was a murder case, State vs. Smith, a murder case where two young colored fellows, seventeen years of age, were picked up

several days after the murder and questioned for some nine and a half hours until one A. M., until two A. M. in the morning, without counsel, and as far as I could read of the case, without any warning, although there may have been some form of a warning in which the Supreme Court of New Jersey says there was nothing wrong with that whatever.

The Court: Now, the case, I think perhaps more in detail, is the authority in my opinion for this. Number one, as far as the voluntariness of a confession is concerned, obviously if an explanation of some type is not given to the [fol. 206] defendant, obviously his rights are violated, but they don't say that you have to go through any particular form. The matter that is before the court is to consider all of the testimony in the case and regardless of what was concerned or what may not have been said, to make up his mind, whether or not it was a voluntary statement given by the person. There is a mistaken idea, I think, and I think the matter further corroborated by that case, that a certain particular form is necessary, and many of the police departments do have, I'm here to warn you of your constitutional rights and this and that appear the other thing no particular form is necessary. The test is this, regardless of what was said or what was done, and I advisedly say what was done because the latest case on today's rule that even psychological coercion can cause an involuntary confession, I forget the name of the case, it has just come out here within the past couple of months, so to test this and the exact words used or the exact words not used, the test is to consider what happened at the time that the rights were being explained or not properly explained, and after the whole thing is considered from top to bottom again emphasizing the fact that no particular wording is necessary, the court then makes up his mind whether or not this is a voluntary confession. That is the test. Now, let us therefore, what was that thing you wanted me to look at?

Mr. Aiken: 2A:8117.1.

The Court: Get the book on this, however, while we're waiting for the book let me actually take the statement as transcribed, and by the Attorney General, or transcribed by a stenographic reporter which purports to be what the Attorney General said.

[fol. 207] Mr. Malandra: Your Honor, before you go into that, may I, for the purposes of the record, state that in the Linum vs. the State of Illinois, this is the United States Supreme Court case decided this March, in which a confession was involved where a woman was framed in a dope case, and the police were questioning her and she was kind of reluctant to give a statement, and one of the police officers said that as much as you're on relief, and away from your husband with the two children, if you don't go, when you're called into court, you're going to lose this relief and you're going to lose the two children.

The Court: I have no quarrel. I think the New Jersey court concurs in that decision.

Mr. Malandra: We're in a position where an entire life is gone, job, pension, life, everything is gone.

The Court: Well, let's take a look at the actual statement and consider it as being a violation of the defendant's rights. Now, this is Mr. Virtue's statement.

Mr. Malandra: Page 63, Your Honor.

The Court: The first part I don't think is in question, down to the particular type of work, the question, the first part is all right.

Mr. Malandra: No, I do not—

The Court: Well, finish up the first part where he says this is why I scheduled this today to ask you questions pertaining to this investigation. And then, the next part, [fol. 208] before I do, I went to advise you anything you say must be voluntary of your own free will, without threat, coercion, or promise of reward, or anything you do say may be used against you or any person in a subsequent proceeding or proceedings in the course of our

State. Do you contend there is anything wrong with the explanation given by—

Mr. Malandra: No, not to that paragraph.

The Court: Now, the third paragraph you do have under our statutes, as you know, a privilege to disclose any matters which may tend to incriminate you; however, if you make such a disclosure with knowledge of this right and without coercion, you thereby waive this right or privilege with regard to any phase of this investigation. Now, is there any contention that that is improper?

Mr. Malandra: There is nothing wrong with that, sir.

The Court: The next one: This right or privilege that you have is limited to the extent that you as a police officer when sworn and asked questions pertaining to your office and your conduct therein, if you refuse to answer, you then may be subject to a proceeding to have you removed from the department.

Mr. Malandra: This is my objection.

The Court: That is where upon you and the Assistant Prosecutor disagreed. Well, let's confine our argument to that particular paragraph, to crystallize the issue here in [fol. 209] dispute. Now, 17.1 was what you were talking about, so that we may all understand 17.1, let's read it.

I'm reading from New Jersey Revised Statutes, annotated 2A:81-17:1, forfeiture of office or employment pertaining to pension rights, to testify on the ground it is incrimination. This of course, is a statute passed by the legislature of New Jersey, and it is comparatively new in origin, at least speaking of it in a general way, and it reads as follows: "Any person holding or who has held an elective or appointive public office, position, or employment with the state, county, or municipality, who refuses to testify upon matters relating to the office, position, or employment on behalf of the prosecution, upon the ground that his answer may tend to incriminate him or compel him to be a witness against himself, or refuse to waive immunity when called by a grand jury to testify therefore,

or who willfully refuses or fails to appear before any court, commission or party of the state which has a right to inquire under oath upon matters relating to position or employment, or who having been sworn, refuses to testify or to answer any material question upon the ground that his answer may tend to incriminate him or compel him to be a witness against himself, shall if holding elective public office, position, or employment, be removed therefrom, or shall thereby forfeit his office, position or employment, and any vested or future rights of tenure or pension, granted to him by any law of this state, provided it relates to the matter which occurred or arose within the preceding five years. Any person so far claiming his office, position, or employment shall not thereafter be eligible for election or appointment to any public office, position, or employment in this state, from the laws of 1959, Chapter 259, page 1759, paragraph 1."

Now, the court, of course, is with some degree acquainted [fol. 210] with that particular statute. And, I think again, the court can go so far as to feel that he under maybe the thinking of the legislature, when they passed the statute, and I suppose that this thinking of at least someone there was a duty and an obligation upon someone who was engaged in the type of employment set down there, like an appointment of office, to forfeit or give up certain rights they might have because their official position there with cases previously when public officials did stand behind the dated concept of self incrimination with the result that members of the legislature, I guess, felt that justice was being thwarted by the exercise of that constitutional privilege.

Now, this statute, as I see it, in effect says you still have the constitutional privilege, you have a right to refuse to answer, but when the legislature of the State of New Jersey feels that you have a different obligation than the average person who does not occupy a public position. Although you do have a constitutional right to exercise that

right, we feel it is your positive duty and if you do not do it, if you choose to accept and stand upon your rights of the constitution, then we feel that as a public officer you should therefore forfeit or be penalized for doing this such thing on the ground that you owe it to the public, as a public official. Now, that is in a general way, as I understand the statute. Let me however, go one step further and get back to this particular paragraph. I will read it: "The right of privilege that you have is limited to the extent that you as a police officer when sworn and asked questions pertaining to your office and your conduct therein, if you refuse to answer, you may then be subject to a proceeding to have you removed from the department." Now, let us assume that some policeman or some public official is unacquainted with this particular statute. Don't you think [fol. 211] that it's the right and the obligation of the person questioning him to explain his rights, either he can stand merely upon his constitutional rights, which are guaranteed, they could have refused to answer. The only thing if they had refused to answer, then as a public official, an answer would be you must forfeit certain rights that you ordinarily would have under the constitutional provisions, merely because they're a public official, whereas you for example, you could still refuse to answer and nobody could do a thing to you, but if you were a public official, the legislature saw fit to arrange a proceeding, where if it were probably proven, you could forfeit the rights you had under the particular office, and alike.

Now, that is what the legislature said, my feeling in the matter, and of course, is that instead of, shall we say, jeopardizing his position, I think Mr. Rigg was obligated under the circumstances, to give this explanation to him, not as a threat, but explanation of his rights legally. Now, you mentioned the federal case. Obviously, as soon as you start threatening people with cutting off relief from this, that and the other thing, that is the very wording itself in the nature of a threat, it is an oral duress, and there it's

a million per cent wrong. These people weren't threatened, or Mr. Virtue, whoever it was, wasn't threatened. He was being told in plain simple words you can rely merely upon your constitutional rights, but if you do, as a public officer, the law of the State of New Jersey is, and obviously the federal case, there is nothing in that, no law which says that because the person would testify that they were going to be deprived of receiving relief, providing they were receiving it lawfully, so that we do not hear an analogous of a similar situation. We have a situation here where the attorney general, in my opinion, at least, is telling him you [fol. 212] have a choice of either relying entirely upon the constitutional rights, but if you do, I want to inform you that by the state law of New Jersey, you may get hurt as far as a penalty is concerned. Now that is the way I read it. You may have some different opinion or interpretation, and if mine is wrong, please persuade me that I am wrong by additional argument.

Mr. Malandra: Well, I don't think there is any duty on the part of the Attorney General when he is trying to get a statement from a defendant to be told that there is such a law pertaining to public officials, or, to which, a police officer. This is a matter that the police officer himself subjects himself to, after, Your Honor, not before, but after he refuses to testify on the grounds that he might incriminate himself. This particular law is of absolutely no value at all until he has refused to testify on the grounds that he might incriminate himself. Then this special proceeding can go against a police officer, and what could they do about it, the very worst they can do is say you, Mr. police officer, you are out of business.

The Court: I do not feel that argument has too much weight and I will permit you to argue further. Let us assume for the sake of argument, that your conclusion is correct, you start to ask the gentleman certain questions, he is unacquainted with his right to rely upon the constitution. He says I don't want anymore public jobs. This is a nui-

sance, it's been this, that and the other, which some of them possibly feel, because shall we say in many cases, unjust criticism, accusations, and alike, goes for judges too, I guess, we are some kind of police officers too, it goes for the prosecutor, and many have some doubt as to [fol. 213] actually the conscientiousness of prosecutors, especially in the present day, in the era of gambling, by the professional, I'm talking about. Now, the fellow refuses to answer on the grounds that he may incriminate himself. Maybe already he has said enough that he's got himself incriminated. Now, you proceed to turn around and tell him, hey, if I had known that, I wouldn't have opened my mouth.

Mr. Malandra: That's why he should have told him he needed a lawyer in the first instance, which they didn't do in this case.

The Court: Do you have any case to say that before a person can give a voluntary confession you must obtain a lawyer for him? State vs. Smith is the latest case, as I understand it, as far as voluntariness or for confessions is concerned, and I think as a practical matter, the judge or somebody ruled this way, that the confession was involuntary and therefore of no useful purpose.

Mr. Malandra: Your Honor please, if our court rules state that a magistrate must do it, certainly wouldn't it necessarily follow that the Attorney General should do it?

The Court: The Attorney General in the state protests that your argument is fallacious on the ground that they did exactly that.

Mr. Malandra: Say that he was entitled to counsel?

The Court: That they went out of their way to explain his rights to him, to say now be careful, Mr. Virtue, we [fol. 214] want you to know what the law of New Jersey is. If you don't testify, there can be a proceeding instituted against you whereby in all probability as far as you and your job is concerned, you're going to be hurt.

Mr. Malandra: Well, Your Honor please, what you're saying to me is that the Attorney General has very politely

informed him of his constitutional right by saying to him, look out now, there's a law which says you may get fired.

The Court: That's right.

Mr. Malandra: Well, Your Honor please, how about the look out, Mr. Officer, you may go to jail for conspiracy. Don't you weigh one against the other? Doesn't the defendant have a right to choose which way he should go? Does the Attorney General give him every law that pertains for police officers? He does not.

The Court: He doesn't have to.

Mr. Malandra: He doesn't have to give him this one, that's my argument. He doesn't have to give him this one. He's not obligated.

The Court: I didn't say that he was.

Mr. Malandra: This comes as a threat.

The Court: The facts to be considered by this court, see, again what you're attempting to construe is that he [fol. 215] must say this and he must say that and he must say the other thing. That is not the law.

Mr. Malandra: That is not what I'm saying, sir.

The Court: Let me finish. If my conclusions concerning that point are incorrect, you may argue me right out. But, as far as he is concerned, when I read the whole of the statement and you admitted yourself that every paragraph is to protect the defendant's rights, before he makes a statement, and that is why I read it, and even though you didn't admit that that was so, the court could have no difficulty arriving at that conclusion. Now, we come to the last paragraph and there is where we disagree. I don't think that the Attorney General is trying to put him in a position where he is threatening him with the loss of his job. This is the law. He has a right to exercise his constitutional rights, but he's saying now, you do have that right, but I also want to warn you that as far as you are concerned that if you refuse to answer, you then may be subject to a proceeding. He doesn't say if you don't answer, you're going to lose this and that, he doesn't say you shall be or you will be or you might be, because the answer is maybe

they will forget all about it and won't pay any attention to it, you see. Now, under the circumstances, you may be subject to a proceeding.

Mr. Malandra: And that is the threat because the law is not that you may be subject to a proceeding, you will be dismissed from the police department. You will be.

The Court: He doesn't say that.

[fol. 216] Mr. Malandra: That's the law, that particular law says not that you may be taken off the police force, you will be taken off the police force.

The Court: Provided it is proven, you could be. Suppose it isn't proven?

Mr. Malandra: Unquestionably. That's academic. If it's not proven, they can't do it. But, that doesn't say you may be, it says you will be.

The Court: Well, that is assuming that the proper proceeding was taken, the proofs are presented, and everything else.

Mr. Malandra: That's right. Now, what's that got to do with this saying to a man now you don't have to testify, you have that right, but if you do, you may be—

The Court: You don't have to testify, but as far as you are concerned, if you choose to rest purely upon your constitutional rights and refuse to testify, the law of New Jersey is—

Mr. Malandra: I would have no argument.

The Court: You get into something, which is definitely the law of New Jersey. In plain simple interpretation, it is that the law of New Jersey is that ignorance of the law excuses no one. Now, he's going out of the way to make sure that he is not ignorant of this particular proceeding, I venture to say right now, you go into this county and find many policemen that do not even know that such a law [fol. 217] exists. As far as some of them are concerned, they may say, well, the headaches and this, that and the other thing, I don't want any part of the job. They could have that right, and I wouldn't blame them right now.

Mr. Malandra: If the Attorney General had said to him, you can refuse, but there is a law in New Jersey which says that if you refuse, you then will be removed from the police department, I would say he was doing the man a favor, and giving him something to think about. But, he doesn't say that. He says if you refuse, you may be taken off. That, in my opinion, is a threat, not the law of New Jersey.

The Court: Where is that a threat, as far as the man is concerned. So he refuses. Take me, for example, on how many cases do I sit where right smack from the witness chair, day after day, hour after hour, pours forth torrents of legal perjury. In the seven years that I've been on the bench, once I ordered him held, a matter presented to the grand jury for a false swearing that he did on the stand. Now, every time I catch him really lying under oath, they may be, but by the same token, they may not be, you see. Now, that's what the Attorney General, he says, I don't know whether you will or whether you won't, under the law you can be, at least.

Mr. Malandra: If he had said that, we'd have a different situation.

The Court: State vs. Smith said he did not need any specific language. It's the thought behind what he did say that has to do with the voluntariness of his statement.

[fol. 218] Mr. Malandra: True, but that's not what we're saying. We're not arguing with the Smith case at all. What I'm saying to you, Your Honor—

The Court: No, I refuse to adopt the attitude that the Supreme Court doesn't know what they're talking about as long as I'm a judge.

Mr. Malandra: But I say to you, Your Honor, is that this was not an explanation on the part of the Attorney General, that if he refused or if he took the fifth amendment, that the law in New Jersey is that if you refuse as a police officer, you're subject to removal. That is the law.

The Court: Not what he said?

Mr. Malandra: That's not what he said, no. He said if you refused you may be removed by a subsequent proceeding.

The Court: All right, State vs. Smith says you do not need any particular language. So, you're saying he should have said you will be, a certain particular word, and I say that that is not the law of New Jersey. Most respectfully, of course, I do say that to you, Counselor.

Mr. Malandra: Well, Your Honor, I think that he should have related to the defendants that they have the right to counsel, that they could have gotten counsel if they wanted and this matter would have never taken place, but they're sitting there without counsel, and they're being told that if they do not cooperate, they will be fired. And, now, if [fol. 219] this doesn't put a man in a position where I'm damned if I do and damned if I don't, I don't know when he could be.

The Court: Do you have any case law to that effect, other than the present pronouncement?

Mr. Malandra: I would like an opportunity to look at it, sir. I haven't at this point.

The Court: All right, you can look at it, and as of the present time, we'll proceed with the further inquiry into the case, and we'll rule on it now, because here's another thing, the law happens to be this as far as confessions are concerned. This proceeding, here, is merely to waive the voluntariness of the confession from the standpoint of law. What I do, as far as this confession is concerned, is in no way binding upon the jury. As far as I am concerned, at this stage of the proceeding, if I say the confession is involuntary, it is my legal duty to throw out the confession and not permit any testimony concerning it. If I leave the confession in, and as a legal matter, all that it is, I am not permitted to tell the jury that I have so ruled. If I dare tell the jury that I have ruled, we immediately have reversible error. If I feel that it is legally admissible, then the same proceeding that we're going through now takes place in the presence of the jury. Without them knowing that we have had any talking about the confession at all.

If you noticed, when I told the jury, I referred to it merely as a legal step, I said nothing about statements, confessions, or anything else. Which under the law, I would have no right to do, at least in my interpretation of the law. Now, we go through the same proceeding that as far as the jury is concerned, they finally, after hearing all of the [fol. 220] facts and everything else, consider the confessions just the same as they would any other piece of evidence in the case, and attribute to the testimony of the witnesses the amount of credibility, or they can believe anything they're entitled to. And, by the same token, the first instruction they get in the charge when they go out or at least right in the beginning, they're informed that the first thing they should consider is the voluntariness of the confession, and if you find that it was voluntary, you may consider it not by itself, but merely as one piece of evidence together with all of the other evidence of the state, by the defendant, and by the state, and as a result of that, come to your conclusion as to the guilt or innocence of one or more of these defendants. Now, by the same token, if in first considering the confession, they feel that it was involuntary, they are immediately to discard the confession, to give no part of the confession any consideration as far as resolving the issue of the guilt or innocence of the defendant. By the same token, the judge in any step, during the case, even in this legal argument here, if he comes to the conclusion even though, in the very beginning he said that it was from a legal standpoint voluntary, he has likewise the legal obligation to himself, and then he may withdraw the confession to tell the jury to give no consideration to it, so that the rights of the defendant, as far as the statement is concerned, are protected right up to the very minute, practically, that they go into the jury room, and even after they go into the jury room to deliberate. So, that is of the present time, my feeling is that we should proceed further in the matter, and I would consider it together with all of the other evidence that is presented at this hearing, purely legal in nature, and then

at the end, render a decision as to its voluntariness from the standpoint of the law, which, of course, is the only [fol. 221] purpose of the present proceeding. All right, now, we partially disposed of that, so let us now continue.

Mr. Malandra: If Your Honor please, may I make this suggestion, the newspapers are here now, and you will probably be reading your statement in tomorrow's paper—

The Court: Well now, we were talking about a voluntary or unvoluntary statement. Now, let's keep the record straight, as far as the newspapers are concerned, I was going to say this another way, newspaper fellows have a job, the same as you or I. I know of many many instances where a story has been phoned in by the newspaper man, and when he reads his story in the newspaper, he doesn't even recognize it. You know, in all newspapers, there are rewrite men, and I can assure you that if after reading the rewritten story by the rewrite man, if some of the reporters gave advent to their true feeling, they would feel that justifiable homicide would be proper as far as the rewrite man is concerned. On the whole, we all make mistakes, I know those two long legged gentlemen, these two reporters over here, and within reason, I don't think they try to slant either way, and may I say of my own knowledge, I know that they are both personal friends of yours, and if they had any desire to slant, I think the wind up would blow toward the Malandras' rather than the Aikens' Haddenfield mansion, believe me. Enough for the newspaper men. Continue.

By Mr. Aiken:

Q. Now, Mr. Garifo, what was the answer Mr. Virtue gave after the statement by Mr. Rigg?

[fol. 222] A. The answer was, "Right".

Mr. Malandra: Does he mean by that, Your Honor please, yes, right Mr. Attorney General, I know about the law, or yes, you're right, Mr. Attorney General, I'm going

to cooperate or, right you are, Mr. Attorney General, I heard.

The Court: May I say that is one of the duties and the obligations of the jury to consider, together with all the other factual issues when arriving at that final conclusion concerning the voluntariness of this piece of paper. I assure you the court will make the greatest effort to be fair and reasonable as far as the interpretation is concerned. I am the umpire between the State of New Jersey with the Prosecutor's office aided and abetted by Mr. Aiken of the Attorney General's office, and a renowned criminal lawyer, which is you.

By Mr. Aiken:

Q. Now, after Mr. Virtue said right, did Mr. Rigg continue with the questioning or did Mr. Virtue answer those questions?

A. Yes.

Q. And during the subsequent questions and answers, were there any threats or intimidations of any kind made by anyone to the defendant?

The Court: Sustain the objection. The court will decide that. Ask him, did this or did that or did the other thing happen, and then the court concludes. You're asking him to conclude that there were no threats or this or that or [fol. 223] the other. What may be in his opinion, a threat may in my opinion, not be a threat. Be more specific. Give me the facts and let me do the concluding because that's what I have to do as far as threats and promises and duress.

By Mr. Aiken:

Q. Well, who was present during the questioning, Mr. Garifo, besides Mr. Virtue?

A. Mr. Rigg and myself.

Q. What happened of any nature, other than the asking of questions and the answers, anything?

A. As far as my participation, I just reported the questions and the answers.

Q. Did you see or hear anything of an unusual nature?

Mr. Malandra: I object.

The Court: I'll permit that.

A. No sir.

The Court: What you consider to be unusual.

The Witness: No sir.

The Court: Screaming, hollering, arguing, anything like that?

The Witness: No sir.

Q. Did the defendant make any complaints about how he was being treated?

[fol. 224] A. No sir.

Q. Did he express any concern about his physical condition or anything of that nature?

A. No sir.

Q. Did he indicate that he didn't want to go on with the questioning for any reason?

A. No sir.

Q. Now, at the conclusion of the questioning by Mr. Rigg, I notice there are two questions that relate to anything that he wanted to add. Would you read those two questions and answers starting here on the page 130, at the bottom, the last question.

A. "Question, this date, is there anything you'd like to add what we have gone over this morning?" "Answer, I don't think there is much to explain, Mr. Rigg, you have the summonses. They were down-graded and it is true. There were no personal gains, if that is what I have implied you to more or less put to me a couple times. As I said, it was done for friendship or feeling sorry for somebody. That is about it."

Q. Is there a question before that, Mr. Garifo, that relates to something he wanted to add?

A. That's the only answer he gave. The question was that I read, and that was his answer.

Q. Now, did you notice during this question, anything of an unusual nature about his mental or physical condition during the questioning?

A. No sir.

Q. I think that's all, Your Honor.

[fol. 225] Cross examination.

By Mr. Malandra:

Q. Mr. Garifo, let me ask you something. When you're taking this testimony, like this, on question and answers, are you more interested in the words that are being spoken than the actions of the people in the room?

A. That's right.

Q. You're interested in the words that come out, is that right?

The Court: I think we can straighten out that point, if we ask Mr. Garifo this. The theory of stenotype in taking down whatever is being said, what is it as far as the fingers are concerned and as far as the mind is concerned. Maybe I can make it more clear. I start to dictate to you until such time as you read that dictation back, you don't even know what I've said, is that correct, isn't it transcribed into the fingers first?

The Witness: That's right, sir, I can't memorize what I reported.

The Court: So he doesn't even know what he has said until he has an opportunity to read it back. The fingers automatically hit whatever signs or anything else are necessary. Now, when you say to him repeat that question and answer, then for the first time, you know what the dictators have said, is that correct?

The Witness: To read it back verbatim, I'd have to read it back to the notes.

[fol. 226] The Court: He may have some slight thought, but that's it. That's why you will see a stenographer a little bit hesitant when she's reading it back because this is the

first time she fully realizes and understands what has been said, is that a correct interpretation?

The Witness: That's true.

The Court: Now, that straightened out on that point.

By Mr. Malandra:

Q. Now, you have confused me. That's not what I had asked him in the beginning.

The Court: Well, I have to tell you now, I think I better excuse this jury for three days, it looks like we're going to be on the statement that long, if we're going to go through all of this.

Q. Didn't you, at any time, Mr. Garifo, feel that Mr. Rigg was pressing this witness?

A. No sir.

Q. Never thought so?

A. No sir.

Q. That's all.

The Court: Now, is there any further necessity for the appearance of Mr. Garifo?

Mr. Aiken: Yes, Your Honor, we've got the other two statements. He took all three in this book.

[fol. 227] The Court: O. K., I'll reserve decision on the voluntariness or involuntariness as of his testimony. Of course, you will have other testimony that you likewise, but is this the only witness you're going to put on?

Mr. Aiken: No, I have another witness, Your Honor, Mr. Rigg.

The Court: Supposing we do it this way, so that we don't get confused. We're all done with Garifo and then you put on your next witness.

Mr. Aiken: Right. Now, will you turn to Mrs. Naglee's testimony.

The Court: No, no. Either handle one at a time, because I'll rule on one at a time, you may step down as soon as they give you the right to get out of here, you can go.

Get rid of everything as far as the voluntariness of the statement is concerned.

(Witness excused.)

[fol. 228] BUDD M. RIGG, being first duly sworn, testifies as follows:

Direct examination.

By Mr. Aiken:

Q. Mr. Rigg, I understand that on the day the statements in question were taken, you were then an acting Attorney General?

A. Deputy Attorney General.

Q. And you had made a point in that capacity in order to assist in the conducting of the investigation relating to the ticket alterations in the Borough of Bellmawr?

A. No, I was serving and had been serving prior to thereto as a Deputy Attorney General. This was one of the assignments which I had as a Deputy.

Q. And by what authority were you delegated to conduct this investigation?

A. It was by order of the Supreme Court.

Q. Do you recall the date of the order of the Supreme Court?

A. As I recall, it was June 30, 1961.

Q. And did you take these statements we have been talking about in accordance with your duties under that order?

A. Yes I did.

Q. Now, will you tell us on the date you took the statement, what time you arrived at the Borough of Bellmawr?

A. It was approximately nine o'clock or shortly thereafter.

Q. And had anything of a preliminary nature been said [fol. 229] or done in relation to the defendants concerning these statements?

A. Yes, the statements were originally sent up for taking during the last week of October. Arrangements were made directly between me and Chief Garrity for the taking of the statements, and then just prior by two or three days to the date which had been designated there were adjourned by me until November 10th. Chief Garrity was to make the arrangements for a place for us to convene for the taking of the statements, and made those arrangements with the fire department. He provided a room and furniture in the room for the taking of the statements.

Q. And, when you arrived at Bellmawr the morning the statements were taken, when did you first see any of the defendants and where were they and what were their conditions?

A. Well, physically, there is the Municipal Building, separated from the Fire Hall by a parking lot. I parked in the parking lot, went into the Municipal Building, into the police station, into the Chief's office, I saw Chief Garrity and Mr. Garifo. We then, and I can't recall whether the three of us proceeded to the fire hall or whether Chief Garrity took me to the Fire Hall alone, to show me the room but in any event, he showed me the room and then we set up the stenotype machine and proceeded.

Q. And in connection with Mr. Virtue's statement, you gave him the warning that we have already here discussed?

A. Yes I did.

Q. Rather than the statement of rights?

A. I did.

Q. And he indicated his assent to continue under the conditions that you outlined to him?

A. Yes.

[fol. 230] Q. And you did continue with the questioning. Now, will you tell us what if anything occurred during the questioning and what you can remember of Mr. Virtue's physical and mental condition.

A. Nothing unusual occurred during the questioning. So far as his physical condition was concerned, it was nothing untoward. He was somewhat nervous as we get into certain

areas of the questioning, but other than that, it was nothing.

Q. He didn't indicate at any time that he was physically or mentally unable to go through with the questioning or that he wanted to stop it or anything of that nature?

A. Absolutely not.

Q. And I take it from what Mr. Garifo has already testified to that at the end of the statement, you asked him if he had anything else to add and he did add something, is that correct?

A. That is correct.

Q. That's all.

Cross examination.

By Mr. Malandra:

Q. Now, Mr. Rigg, you were Deputy Attorney General in charge of investigations by order of the Supreme Court, is that right?

A. That is correct.

Q. And you were down there as an inquisitor, right?

A. As an investigator—

Mr. Aiken: I object.

The Court: The court understands. Some people think [fol. 231] they're synonymous. The court is hearing this without the jury, so I'll permit it.

Q. You were there to gather evidence against the people that the Supreme Court had asked you to go gather, isn't that right?

A. The Supreme Court order, as I recall it, I don't have it before me, but directed the Attorney General's office to conduct an investigation into certain alleged irregularities in the conduct of the Municipal Court, and motor vehicle summonses therein, as well as officials connected therewith.

Q. You went down there to find out if the law had been violated, weren't you down there for that reason?

A. Absolutely.

Q. And you were down there to find out that if the law was violated, you were to apprehend those that violated the law, isn't that so?

A. No.

Q. Well, isn't that what an investigation is for?

A. No, I had no power of arrest.

Q. Well, ultimately, that's what happened, isn't it?

A. I didn't arrest anyone, no.

The Court: When you say apprehend, he means that he physically—

Mr. Malandra: No, I don't mean to arrest them, I mean you were down there to get enough evidence so that they could be charged with these offenses, if they had committed them.

The Witness: If such evidence existed, yes.

[fol. 232] Q. You were down there looking into the situation, looking for violations, were you not?

A. Yes.

Q. And weren't all of the defendants apprised of the fact that you were there for the purpose of finding something on them?

A. Yes.

Q. So that they didn't think you were down there as their benefactor, did they?

A. I think not.

Q. And, under these circumstances, you quizzed them for hours on November 10, 1950, is that right?

Mr. Aiken: We're only talking about Mr. Virtue at the moment.

Mr. Malandra: We're talking about Mr. Virtue, yes.

The Witness: Mr. Virtue, I could not say that was hours, no.

Q. Can you say how long it would take?

A. I can say this, the best answer I can give you there was that there were six parties questioned, we started proceeding approximately 9:30 or quarter of ten, and as I re-

call, we stopped at 3:30 or four o'clock, because Mr. Garifo had a personal problem and it was intended to be continued at a future time.

Q. Now, you asked them questions, did you not?

A. Yes.

Q. They didn't just come in and give you voluntary statements as to what had transpired?

A. On November 10th?

[fol. 233] Q. On November 10th.

A. No.

Q. You questioned them?

A. That is correct.

Q. You asked them questions and they had to answer them.

A. If they so desired, yes.

Q. Well, you said they had to be checked off the police force if they didn't, didn't you?

A. I did not.

Q. Why did you tell them at the beginning that if they did refuse, they may be chased off the police force?

A. Because they might have been.

Q. That's right?

A. Yes.

Q. So they either had to answer or get chased off, isn't that so?

A. I did not say that.

Q. Well now, you didn't just say to them just because you like to hear yourself talk?

A. No.

Q. You told them that because you wanted to apprise them of the facts.

A. That's correct.

Q. That if they refused, they may be chased off the police force.

A. That's correct.

Q. Now, did they ever sign any of these statements?

A. No, not these statements.

Q. These statements were never signed by any of the defendants?

A. That's correct.

Q. It was a question and answer situation, was it not?

[fol. 234] A. Yes.

Q. Were you in the role of prosecutor?

A. Investigator.

Q. And as prosecutor, was it not—

The Court: He said investigator.

Q. Now, weren't you supposed to investigate this and then prosecute it?

A. No.

Q. Well now, when did you know that the prosecutor's office was going to have this?

A. When I was fairly certain that the offenses were in fact committed. Then I knew that the Prosecutor's office would ultimately have it.

Q. Well, as a matter of fact, you never knew the Prosecutor's office was going to have this at all until after they got it?

A. I did.

Q. Didn't you leave the Attorney General's before the Prosecutor got this case?

A. Before they actually had the case.

Q. That's right, so that you were out of the services when the Prosecutors of Camden County got this case.

A. Not when the determination of it was to be turned over to it.

Q. Well, as I understand it, it was rather late in 1961 when the Prosecutor of Camden County was apprised that it would be turned over to him, isn't that so?

A. I don't know when he was apprised.

Q. You were no longer in the employ?

A. I don't know when he was apprised.

[fol. 235] Mr. Aiken: I object on the basis that it's completely irrelevant and immaterial.

The Court: Overrule the objection. The court has considerable latitude. I kind of understand Mr. Rigg's position. May I say that I am fully acquainted with the facts that he decided he wanted to disassociate himself with the Prosecutor's office for his own reason. Maybe he showed good sense in getting out of there, so that as far as we are concerned, however, it could be considered shall we say if the issue of credibility and alike, but I will allow it. There is no jury here. I don't think much harm can be done.

The Witness: To clarify it, may I say, as I recall, I was associated with the Prosecutor's office or the Attorney General's office, until I think it was July or August, '62, not late '61.

Q. And this went to the Prosecutor's office in late November, '62?

A. Well, I was no longer in the Attorney General's office then.

Q. So that you couldn't know when you left in August that it was going to the Prosecutor's office in November, three or four months after you left?

A. I knew prior to my leaving in August.

Q. You knew prior?

A. Yes.

Q. May I ask you how you knew prior?

A. Because it was determined by my superiors that if criminal acts be discovered with participants identified, that it would be turned over to the Prosecutor's office for prosecution of criminal charges, as opposed to rule viola-
[fol. 236] tion, which would be handled by the Supreme Court.

Q. How do you know that your superior officers made that decision?

A. We discussed it.

Q. When?

A. Prior to my leaving.

Q. That would be before August of '62?

A. That's correct.

Q. And would it surprise you if I told you that the first time that the Prosecutor's office heard about this matter that they were going to handle it was in late November of '62?

A. No, probably the final report was completed around then.

Q. You never made a report?

A. I never made a report, correct.

Q. That's right, so that you didn't know this was going to the Prosecutor's office at all.

A. Well, I have answered you, I knew that it would be.

The Court: He said as far as he was concerned, Mr. Malandra, he sat down at one time with some of his superiors and to the best of his knowledge and understanding, he recollects the decision was then made that if further prosecution was necessary as a result of his investigations or as part of his investigation, that the matter of prosecution would be turned over to the local prosecutor's office, rather than have it retained by the Attorney General.

Q. Now, wasn't it determined after or on November 10th, 1961, now that's seven months before you left or eight months before you left, wasn't it determined then that there would be some criminal action in this case?

[fol. 237] A. Yes.

Q. Now, you say that they waited from November 10th, of 1961, until November of '62 before they sent to the Prosecutor's office?

A. You said that, I don't know when they sent it to the Prosecutor's office.

Q. You said they left there in August?

A. That's correct.

Q. And you said as soon as it was determined that there was some criminal acts it would be turned over to the Prosecutor's office?

The Court: May I try to straighten this out. May I ask you this question, do you know when the investigation was finally completed or terminated?

The Witness: No.

The Court: Let me ask you another question. Was the investigation terminated as far as you know when you resigned from the Attorney General's office?

The Witness: No, it was not.

The Court: In other words, somebody else then continued the investigation where you left off?

The Witness: Compilation of the investigation, yes.

Q. Now, as I understand it, November 10th, after you took these statements on November 10th, that you then decided that there were some criminal acts here, that this thing just stayed dormant until December 4, of '62.

[fol. 238] Mr. Aiken: I want to renew my objection.

The Court: Mr. Malandra, it is rather obvious to the court what happened is this. Mr. Rigg is sent down there from the Attorney General's office from the very beginning, I don't think he went down there looking for trouble, he went down there honestly as an attorney and I think we both recognize him as a capable lawyer, to investigate and if he found anything that he construed to be as far as alterations or anything else, as far as the situation is concerned, pertaining to this general charge or general suspicion or as far as this thing is concerned, he then turned over the results of the investigation to superiors. He is not the Attorney General.

Mr. Malandra: That's not what this man said.

The Court: This is what I'm going to rule on and we're getting too far from the main point. You see, as far as we're concerned all of this is immaterial and irrelevant. We're not interested in what he did. He finished up and what he did and then they got out. Let's stop being ridiculous.

Mr. Malandra: I agree with what you are saying, except one thing, that there is a bad gap here, a very bad gap.

The Court: I shall rule that any further questions in this matter is out of line. A man has a right to quit when he did, it has nothing to do with the case. Continue.

Mr. Malandra: I have no further questions.
[fol. 239] The Court: You may step down.

(Witness excused.)

Mr. Aiken: Now, I would urge the court to admit the statement of Mr. Virtue as a matter of law.

The Court: The court will reserve decision on that whose thing until I dispose of the three of them, which is likewise my legal right. Proceed with the next.

Lawrence Garifo, having already been sworn, testifies as follows:

Direct examination.

By Mr. Aiken:

Q. On the same day I understand you took the statement of Mrs. Naglee?

A. That's right.

Q. And her statement was taken in the same room and with the same persons present during the questioning as they were with the case of Mr. Virtue?

A. Yes.

Q. And was generally the same questioning of Mrs. Naglee conducted in approximately the same manner?

A. Yes.

Q. And was she given a statement of her rights by Mr. Rigg?

A. Yes.

[fol. 240] Q. And what was that statement?

A. You want me to read it?

Q. Yes please.

A. "Question, Mrs. Naglee, as you know I am working under a Supreme Court order dated this last June whereby or whereunder I am directed to conduct an investigation of certain irregularities in the handling of motor vehicle

cases in the Municipal Court, and apparently the police department here in the Borough of Bellmawr, and it is pursuant to that order that I have asked you to answer some questions which I want to put to you. Before you do, however, I want you to be fully aware of the fact that anything you say must be voluntary and of your own free will and accord without any threat, promises or reward or any coercion. You do have a privilege to refuse to make any disclosures or give any answers which tend to incriminate you. Things that you tell me today may be used against you or any other person in a subsequent criminal proceeding. That is why you have that privilege under the law. However, if you do answer a question and make a disclosure, by so doing you thereby waive this right or privilege that you have in relation to the entire investigation. You understand that? Answer, I do."

Q. Now, after her assent to continue with the questioning, did she continue and answer the questions?

A. Yes sir.

Q. And did anything of an unusual nature occur during her questioning by Mr. Rigg as far as you can recall?

A. Well, it's not in the record, I don't believe, but prior to Mrs. Naglee entering the room, there was some discussion about a heart condition, I believe, and she was assured by Mr. Rigg that he would proceed for her conve- [fol. 241] nience and if she ever felt the necessity to call a time out or anything, to let him know.

Q. And did she, as far as you can recall, indicate that she wanted to stop temporarily or permanently because of her physical or her mental condition?

A. If anything happened, they might have stopped just for a glass of water, that's probably the only thing that happened.

Q. Now, will you turn to the end of Mrs. Naglee's statement and see if Mr. Rigg asked her if she wanted to add anything or anything of that nature.

A. Well, at the end of her statement, Mr. Rigg said "So far as the questioning is concerned, that will be all. I want to question you again, but it will be sometime later."

Q. Did she make any remark in that connection?
A. No sir. Then it just ended.

The Court: May I ask you this, as I understand it, Mr. Rigg was apprised of the fact that she did suffer from some type of a heart condition, is that correct, before any questioning or anything else began, is that right?

The Witness: Yes sir.

The Court: And then, as I understand your testimony, you said you heard him notify her that if she felt any distress or anything else or words to that effect that she was to draw it to his attention immediately so that possibly an illness or sudden emergency or anything else having to do with any involvement of the heart should be taken care of immediately.

The Witness: Yes sir.

[fol. 242] Q. Now, during the time Mrs. Naglee was being questioned, is there anything that you personally observed that would lead you to believe that she was suffering discomfort of any description whatsoever?

A. Well, just from my observation, there was a lot of hesitancy in the questions and answers. It wasn't a difficult interrogation and answer period to report by reason of the slowness of the answers and whether I call it nervousness, somebody would call it something else.

The Court: Well, that gives me the general impression.

Cross examination.

By Mr. Malandra:

Q. Mr. Garifo, was the same statement made to Mrs. Naglee as was made to Detective Virtue by refusing to answer she may be subject to a proceeding removing her from the department?

Mr. Aiken: Both statements are in the record. He read them both.

The Court: Overrule the objection. This is cross-examination and you may answer.

A. All I can say, sir, verbatim the two statements were different. I mean verbatim, they are not the same.

Q. There is nothing in that original statement made by Rigg to Mrs. Naglee which says that if she refuses to tes-
[fol. 243] tify, she may be subject to a proceeding by removing her as clerk, you didn't hear that?

A. No, I did not hear those words.

Q. It's not down there?

A. No, it's not in here.

The Court: He didn't say it either, did he?

The Witness: He did not say those words.

Mr. Malandra: That's all.

(Witness excused.)

Budd M. Rigg, having been previously sworn, testifies as follows:

Direct examination.

By Mr. Aiken:

Q. Now, Mr. Rigg, I take it that you conducted—

Mr. Malandra: Your Honor, I make the same motion toward Mrs. Naglee's statement as I did toward Mr. Virtue.

The Court: That's all right, you gave a general exception at the whole works, renew any and all motions and I will rule on any and all motions.

[fol. 244] Q. Mr. Rigg, I take it that you conducted the questioning of Mrs. Naglee on the same day and at least in approximately the same manner that you conducted Mr. Virtue's questioning?

A. Yes.

Q. Apparently there was one difference, in relation to Mrs. Naglee's physical condition, can you tell us about that?

A. Yes. Chief Garrity had indicated to me that Mrs. Naglee had in the past had a heart attack or a general heart condition, and that she was easily upset and to be very careful when I talked with her, and I confirmed this at the outset before we commenced the questioning with her and she affirmed and as a result I did not press as hard as I might have.

Q. And, what did you indicate to her to do if she felt any distress in connection with her physical or mental condition?

A. I told her to bring it to my attention immediately and we would stop.

Q. In any time during the questioning, did she indicate she was suffering any kind of distress from her heart condition?

A. No.

Q. And approximately as far as you can tell, how long did the questioning take?

A. I would say approximately three-quarters of an hour.

Q. Three-quarters of an hour?

A. Maybe an hour.

Q. And if you recall stopping the questioning to get a drink of water, take a rest, or anything of that nature?

A. I don't recall that, no.

Q. And did you note the hesitancy that Mr. Garifo mentioned?

[fol. 245] A. Yes.

Q. And was there anything else of an unusual nature that you noticed in connection with Mrs. Naglee's condition?

A. No, just in relation to certain questions, there was a hesitation.

Q. And she didn't indicate that she was in distress of any kind?

A. No.

Q. All right. Cross-examination.

The Court: You mean distress of any kind attributable to some kind of heart trouble, that's what you mean? I mean obviously there was some hesitancy in the answers attributable to her nervousness but there was nothing that you observed that you attributed to this type of a heart involvement, is that correct?

The Witness: That's correct.

Cross examination.

By Mr. Malandra:

Q. Why didn't you apprise Mrs. Naglee of that law that says if she refused to testify, that she may be removed from office?

A. Very frankly, it didn't occur to me at the time. I was thinking in terms of these police officers.

Q. So, at the time you gave it to Virtue, it occurred to you, you were then giving him the benefit of your knowledge and protecting him, it just didn't occur to you?

A. That's not correct.

Q. Isn't that what you just said?

[fol. 246] A. No, that's not correct. The reason that I was concerned with relation to these police officers is that during the course of this investigation, another police department was involved, and another police officer specifically was involved in this statute was brought to my attention as a result of that involvement, and I had been apprised of the statute in relation to police officers, and that's why it occurred to me, when I questioned these officers, as I did in other municipalities and not in relation to the clerk.

Q. Doesn't the same act also say elected and appointed clerk?

A. It does.

Q. That's all.

The Court: Wait a minute, what is this business about pressing, ask that question and then quit because if you're not going to call him back and ask him what he meant by the pressing business.

Mr. Malandra: Your Honor, I'd be very happy to have you ask him that.

The Court: Well, I refuse to do it at this time. Are you finished with the witness?

Mr. Malandra: Yes.

Mr. Aiken: Yes.

The Court: You are excused.

(Witness excused.)

[fol. 247] LAWRENCE GARIFO, having been previously sworn, testifies as follows:

Direct examination.

By Mr. Aiken:

Q. Larry, you also took Chief Garrity's statement the same day?

A. I believe, yes.

Q. And I think he was the last one whose statement of the six that you took that day, is that correct?

A. That's right.

Q. And I assume Mr. Rigg conducted that questioning similar to the questioning of the other two defendants?

A. Yes.

Q. And was Chief Garrity given a warning or a statement of his rights by Mr. Rigg and if so, what was it?

A. Yes, he was. It reads as follows: "Question, Before I get started, because of the lateness of the hour and other commitments, I will undoubtedly have to question you again as well as Mrs. Naglee and perhaps one or two of the other officers. I would just like to establish a few things here quickly now. Before I do, however, you and I are aware of the purpose of the investigation of your being here today. Before I ask you any questions concerning this investigation into the alleged irregularities of the handling of municipal traffic violations in your department,

I want to advise you that anything you say must be said of your own free will and accord without any threats or promises or coercion, and anything you say may be, of course, used against you or any other person in any sub-
[fol. 248] sequent criminal proceedings in the course of our State. You do have under our laws, as you probably know, a privilege to refuse to make any disclosure which may tend to incriminate you. If you make a disclosure with knowledge of this right or privilege, voluntarily, you thereby waive that right or privilege, in relation to any other questions which I might put to you relevant to such disclosure and this investigation. This right or privilege which you have is somewhat limited to the extent that you as a police officer under the laws of our state, may be subjected to a proceeding to have you removed from office if you refuse to answer a question put to you under oath pertaining to your office or to your function within that office. It doesn't mean, however, you can't exercise the right. You do have the right. Answer, No, I will cooperate."

Q. All right, now, during the course of the questioning of Chief Garrity, did anything of an unusual nature occur?

A. No sir.

Q. As far as you know, did you notice anything unusual about his physical or mental condition?

A. No sir.

Q. Did he make any complaints of any kind relating to his mental or physical condition?

A. No sir.

Q. Did he object in any way to the conduct of the questioning, if you know?

A. If he did, it's in the record.

Q. And, if he did, you don't recollect it of your own recollection?

A. No sir.

The Court: Without going through a lot of papers, he said if he did, it's in the record.

[fol. 249] Q. And, do you recall or would you check and see whether or not at the end Mr. Rigg asked him if he had anything to add or anything of that nature?

A. No, the last thing Mr. Rigg said was, "Suppose we break now and we will have to go on further, Ed."

Q. That's all.

Mr. Malandra: I have no questions.

The Court: You may step down.

(Witness excused.)

Budd M. Rigg, having been previously sworn, testifies as follows:

Direct examination.

By Mr. Aiken:

Q. You conducted the questioning of Chief Garrity the same day, and you gave him the warning that Mr. Garifo read from the transcript?

A. That's correct.

Q. And in the morning when you arrived, as I understood it, that you even set up the room and made the arrangements for the questioning to be conducted?

A. Yes, he did.

Q. Do you know where he was during the time between the commencement of the questioning with whoever was first to the time you actually started questioning him?

[fol. 250] A. As far as I know, he was in the police station.

Q. And when you were ready for him, you called him in?

A. Yes, each witness, as I would conclude with each witness, I would tell that particular person whom I wanted to question next.

Q. I see. And, when he came in before you started on the record, did you have any conversation with him, do you recall, of any significance?

A. Yes, as a matter of fact, his case was different from the others. I had recessed after questioning Mrs. Naglee. And, I had gone back to the police station with her to obtain certain data which she told me was in custody there and as I recall, Chief Garrity then walked back from the police station with me and we were discussing this data which I had obtained at that time in my possession.

Q. And, at any time before you started the questioning, did he indicate any reluctance of any kind for any reason to go along with the questioning?

A. No, as a matter of fact quite the contrary. He indicated that provisions had been made for him to have counsel.

Q. What?

A. Provisions had been made for him to have an attorney represent him, but he didn't feel at that point it was necessary.

Q. Did he show any reluctance of any kind after you gave him a warning and you started to question him?

A. Absolutely not.

Q. And did he exhibit any unusual mental or physical signs during the questioning?

A. After we got started, nothing other than nervousness.

Q. Did he complain to the conduct of questioning in any way?

[fol. 251] A. No.

Q. That's all.

Cross examination.

By Mr. Malandra:

Q. Now, Mr. Rigg, while you were apprising him of his constitutional rights I notice that you went a little further in the chief's case than you did in Mr. Virtue.

Mr. Aiken: I object.

The Court: Overrule the objection.

Q. And there, you said you quoted the law to him, that if he refused to testify that there could be a proceeding removing him and then you added that it doesn't mean, however, you can't exercise the right, you do have that right, and he answered, no, I will cooperate.

A. Yes.

Q. Did you get from that that he was choosing between cooperating with you or standing against a proceeding to remove him from office?

A. Frankly, no, I did not get that impression.

Q. That's all.

Mr. Aiken: I don't understand what impression you're referring to, Mr. Rigg.

A. Well, as I understand the question, the question was did I get from this answer, no, I will cooperate, an impression that he was choosing between answering my questions [fol. 252] or losing the job, and my answer was I did not get that impression that he was making such a choice.

COLLOQUY

The Court: Gentlemen, we have reached the magic hour of four o'clock, and of course, time to adjourn for the day. At this time, court stands adjourned until quarter of ten tomorrow morning. Now, I do not in any way want to limit counsel to examination or cross-examination as far as this or any other of the statements are concerned, because this is a very important part of the case. So, the court feels extremely desirous of being enlightened as to all of the facts and circumstances surrounding it, but I want to make what I conceive to be as far as the admission of this statement from a legal standpoint is concerned. Tomorrow morning, quarter of ten, the same room. I have given word that the jury is being told not to come in until two o'clock because at the speed we're going, two o'clock seems a safe time to come back and proceed with the other facts in the case. We stand adjourned therefore until quarter of ten tomorrow morning.

May 3rd, 1963,
Camden, New Jersey.

The Court: Now, gentlemen, where were we yesterday?

Mr. Aiken: Your Honor, I had just finished with all my witnesses in relation to the statements taken by Mr. Rigg. [fol. 253] Did you have anything else on some cross-examination, Mr. Malandra?

Mr. Malandra: No, I did not. I was all through.

The Court: All right.

Mr. Aiken: You were through all of my witnesses. I have no further witnesses in relation to the statement.

The Court: Well now, gentlemen, I think to avoid any confusion that is why I suggested to do it this way. We only have the three witnesses anyway, so then we have the state side of the case, I did anticipate it would be somewhat similar to the way the testimony went in, there isn't too much difference or variation in the testimony of either Mr. Garifo or Mr. Rigg from the standpoint of the state's case. So, I think under the circumstances then, we can follow the same procedure with Virtue first and then Mrs. Naglee and Chief Garrity on each of them, any testimony they want to put in contrary to that presented by the state, and then of course at the end of that, I will rule on all of it.

Mr. Malandra: It was my understanding we were going to continue on with these other statements, Prosecutor.

The Court: Well, it's entirely up to the court. I have no preference one way or the other.

Mr. Malandra: It was my understanding that he was [fol. 254] going to go on with the other statements that were taken by the Prosecutor.

The Court: I'll be guided by whatever you gentlemen want to do because the whole thing is legal anyway. The only reason I put it this way, I thought it would be less confusing. I anticipated that as far as this thing is concerned about Mr. Rigg took these statements, that is approach to each of the three witnesses would be approximately the same. Obviously there would be some minor

variations. We would expect that he is saying something and then he wouldn't necessarily say it the same, because he wasn't reading the information. First, it was said one way, see, it's easily the same thought he might use different wording, something like that, and of course that's the way that it worked out. Now, as far as I was concerned, my thought was that at the end of the three, the state rests as far as their part of this is, from a legal standpoint, and then you could come if you want, but if you prefer to do it the other way, I don't care.

Mr. Malandra: My only thought was that we may as well get it all on all the statements and then so we can get that all otherwise we have got to go back over it again.

The Court: All right, Mr. Aiken says we have no objection, so supposing we send for Mr. Kaplan.

Mr. Aiken: Well, I can start with Mr. Garifo.

The Court: All right, go ahead.

[fol. 255] Lawrence Garifo, having been first duly sworn, testifies as follows:

Direct examination.

By Mr. Aiken:

Q. Mr. Garifo, I think we all know who you are and it isn't necessary to establish your qualifications.

The Court: I think we can stipulate that as far as Mr. Garifo is concerned, he is a certified court stenographer and that at that particular time, you were actively engaged in the courts here in Camden County as a certified court stenographer, is that correct?

The Witness: Not at the time of these statements.

The Court: In other words, you had left by this time then?

The Witness: Yes.

The Court: Well, you originally were a certified court stenographer connected through the state and court located in Camden County.

The Witness: Yes.

The Court: And subsequent to some period of service, you did resign and become interested in some outside activities, is that correct?

[fol. 256] The Witness: Yes.

The Court: When was that?

The Witness: February 1, 1962, I resigned.

The Court: Well, you still are, however, a certified court stenographer of the state of New Jersey.

The Witness: Yes.

The Court: Is there anything else, Mr. Malandra?

Mr. Malandra: No.

The Court: All right, proceed.

By Mr. Aiken:

Q. Mr. Garifo, I show you three separate statements, the first dated December 4, 1962, where the witness was Edward J. Garrity, the second is dated December 5, 1962, where the witness was Helen B. Naglee, and the third is December 7, 1962, where the witness was Edward Virtue and I ask you which of those statements you took as a certified court reporter.

A. I reported the entire statement of Chief Garrity.

Q. All right.

A. I had nothing to do with Mr. Virtue, and I reported a portion of Mrs. Naglee.

Q. Is there any way of telling which portion you reported of Mrs. Naglee's and which was reported by some other stenographer?

A. Yes. In Mrs. Naglee's, I reported from page 58 on.

[fol. 257] The Court: Was that on a different day and everything?

The Witness: No sir. Mr. Albert had been in the Prosecutor's office all day, and I relieved him at approximately 4:30. In other words, he was getting tired.

The Court: In other words, this was a continuation of the same inquiry that was being made in the Prosecutor's

office, but the stenographer stopped and you took over in place of him.

The Witness: That's right.

The Court: It was a continuous statement, I mean by that at one particular time, that all you did is he stepped up and you sat down and continued with the statement?

The Witness: That's right.

By Mr. Aiken:

Q. Mr. Garifo, in relation to the statement of Mr. Garrity, can you tell us who was present during the period of time that it was taken?

The Court: Give us a date here first.

A. The statement was taken Tuesday evening, December 4, 1962.

Q. And who was present?

A. Mr. Sidney Kaplan, Assistant Prosecutor of the County of Camden, Mr. John F. Corbin, Sergeant of the [fol. 258] New Jersey State Police, Captain Philip J. Large, Camden County Detective Bureau, Mr. Garrity, and myself.

Q. Now, prior to the commencement of taking of the statement, did you have a conversation with Mr. Garrity of any kind, if you recall?

A. No sir.

Q. Now, prior to him answering certain questions relating to matters involved in this trial, was he given any kind of a statement of his rights by anyone?

A. If it's on the record.

Q. Is there anything of that nature on the record and if so, will you read it to us and tell us who gave that statement of rights?

A. Yes. It was given by Mr. Kaplan. It reads as follows:

"Question, Chief Garrity, of course, the background of this is the idea that in Bellmawr there was a policy or practice of what is commonly known as fixing tickets, which meant altering or changing traffic tickets, and I believe that you are familiar with the fact that that is something that has

been suggested. Now, I would like to go over these. Before we go on, I explain to you that we are working a Supreme Court order dated last June directing originally the Attorney General to investigate the Municipal Court in Bellmawr, and now it has been referred to the Prosecutor of Camden County for further investigation, to supply facts that were not obtained by Mr. Rigg in his capacity as Deputy Attorney General concerning irregularities in the handling of motor vehicle matters. There are some questions we wanted to ask you and before I do, I want to advise you that anything you say must be voluntary, of your own free will and accord, without any threats, promise or coercion. Anything you say may be used against you or any person in any subsequent proceeding in the courts of our State. [fol. 259] You do have the privilege under our laws to refuse to make any disclosures which you feel may tend to incriminate you. Now, shall be proceed? Answer, yes."

Mr. Malandra: Now, if Your Honor please, I once again would like to renew the motion I made earlier yesterday concerning the statement taken by Mr. Rigg in Bellmawr on November 10, 1961. Now, I make the same objection on the ground, may it please the court, that the subsequent interrogation on December 4th, 1962, 13 months after the first statement was taken, at this second statement is predicated upon the first statement taken on November 10, 1961 and all of the objections that I made to that statement at that time will pertain to this statement as much as this one is based upon the first statement.

The Court: Well, now so that the court may properly understand your argument, before I rule on it, let us do the same thing as we did with the previous statement by the Deputy Attorney General at the time that he took the statement at the fire house in Bellmawr. Question by Mr. Kaplan, "Chief Garrity, of course, the background of this is the idea that in Bellmawr there was a policy or practice of what is commonly known as fixing tickets, which meant altering or changing traffic tickets, and I believe that you

are familiar with the fact that that is something that has been suggested." Is there any quarrel with that?

Mr. Malandra: I object to that, if Your Honor please. I think that immediately puts the defendant Chief Garrity, in the position of where he was going before he starts, with the question being asked. He puts in there that there was [fol. 260] a policy or practice which was commonly known as fixing tickets.

The Court: That is the contention of the state that there was a policy and so on and so forth. Up to the present time, there has been nothing proven about a policy, as far as we are concerned, we have a situation of eight overt acts, and that is what the prosecutor is putting in at the present time. Now, while an investigation is going on, you can say it has been suggested that you were connected with Murder, Incorporated and they had a policy of going around and killing people and so on and so forth. It may subsequently turn out that you had nothing whatsoever to do with it, but under the circumstances, they are telling you what they are calling you in there for to ask you questions and to try to get answers from you, to see if you are in any way involved or if the information they received from you will involve anyone else in the contention that they make concerning a policy for this business of fixing tickets. The state may contend a hundred and fifty things, but it's been your experience on many occasions, for example, they were most vigorously contending that the defendant was guilty, you were on many cases when the final verdict came out either by the court or the jury that their contention had no merit and found the man not guilty so they can contend anything but the contention means absolutely nothing, it's the final result to it, the verdict in the case by the court or the jury that confirms the contention or throws it out the window as having no merit.

Mr. Malandra: I understand Your Honor's explanation, but I still must object to it.

[fol. 261] The Court: Overrule the objection. The next paragraph, "Now, I would like to go over these. Before we

go on, I explain to you we are working a Supreme Court order dated last June directing originally the Attorney General to investigate the Municipal Court in Bellmawr, and now it has been referred to the Prosecutor of Camden County for further investigation, to supply facts that were not obtained by Mr. Rigg in his capacity as Deputy Attorney General concerning irregularities in the handling of motor vehicle matters."

Mr. Malandra: I have no objection to that.

The Court: All right. Next paragraph. "There are some questions we wanted to ask you and before I do, I want to advise you that anything you say must be voluntary, of your own free will and accord, without any threats, promise or coercion. Anything you say may be used against you or any person in a subsequent proceeding in the courts of our state." Any objection to that?

Mr. Malandra: No objection.

The Court: The next paragraph, "You do have the privilege under our law to refuse to make any disclosures which you feel may tend to incriminate you."

Mr. Malandra: No objection.

The Court: Do you wish to argue further than upon the introductory statement?

Mr. Malandra: No, just that I'd like to incorporate my original argument.

[fol. 262] The Court: All right, let the records show that previously Mr. Malandra made several objections to the explanatory statement given by the Deputy Attorney General, Mr. Rigg, and that as far as he is concerned, although he has made one specific objection, it is to be clearly understood that all of the objections made to the previous introductory statement, are to be considered likewise without formally making them as being incorporated and referred to and a part of the objections concerning the statement, the introductory statement made by Mr. Kaplan at the interrogation of the defendant, Garrity.

Mr. Aiken: May I raise just one point in connection with Mr. Malandra's objection to the statement, to Mr. Gar-

rity by Mr. Kaplan, he says he's making the same objection and that's what I don't understand because one of the objections he made yesterday was related to the statute 2A: 81-17.1.

The Court: Suppose I qualify by saying insofar as they refer to this particular matter.

Mr. Aiken: All right.

By Mr. Aiken:

Q. Now, Mr. Garifo, when you took the statement of Chief Garrity, mechanically shall we say, did you use the same procedure as you explained to us about the procedure you used in connection with the statements we discussed yesterday?

A. Yes sir.

[fol. 263] Q. You took it on your machine and you dictated it from your notes and the transcriber made it up, is that right?

A. Yes.

Q. And the original, I believe the original of the transcript that you made is there in front of you?

A. Yes sir.

Q. Now, during the course of the interrogation of Mr. Garrity by Mr. Kaplan, did you notice anything unusual or out of order concerning Chief Garrity's physical or mental condition?

A. No sir.

Q. Did any additional happenings take place during the interrogation?

A. Not that I remember sir.

Q. I understand you started in the evening, could you give us some idea of what time you started?

A. Approximately six-thirty, in that neighborhood.

Q. Now, what time did the interrogation terminate?

A. One-thirty the following morning.

Q. Now, during that period of time, were there any recesses taken or breaks or rest periods?

A. Oh, yes, there were a few of them.

Q. Do you know whether or not any food was brought in for the participants or that sort of thing, food or coffee or anything?

A. All I could say right now is coffee, I can't remember any food.

Q. And, at any time, during this interrogation, did Mr. Garrity indicate any desire to terminate the interrogation because of physical or mental condition?

A. Not that I remember, no sir.

Q. Did he indicate that at any time as far as you can [fol. 264] recall, that he felt that this wasn't a proper procedure of some kind or anything of that nature?

A. If he did in my presence, it's on the record.

Q. All right, that's all.

Mr. Malandra: I have no questions.

(Witness excused.)

JOHN F. CORBIN, being first duly sworn, testifies as follows:

Direct examination.

By Mr. Aiken:

Q. Mr. Corbin, I understand you're connected somehow with the New Jersey State Police, is that correct?

A. Yes, I am a member of the New Jersey State Police.

Q. And what capacity do you serve now?

A. I am a detective, second class.

Q. And how long have you been a detective second class?

A. Six years.

Q. And I understand that in 1961, you were assigned to Assistant Deputy Attorney Budd Rigg in his investigation in Bellmawr among other places, is that correct?

A. That's correct.

Q. Now, in connection with your duties assisting Mr. Rigg, do I understand that you were present on December

4th, 1962 or rather as a continuation of your duties assisting Mr. Rigg, were you present at the taking of the statement [fol. 265] from Chief Garrity on December 4th in the Prosecutor's office?

A. Yes, I was.

Q. Were you there the whole time?

A. The entire time.

Q. Now, during the questioning that was conducted I understand by Mr. Kaplan?

A. Yes.

Q. Did anything of an unusual nature take place, anything out of the ordinary?

A. No.

Q. Did you have an opportunity to observe Chief Garrity's physical and mental condition?

A. Yes.

Q. Was there anything unusual or extraordinary about it?

A. No.

Q. During the questioning, did he indicate any desire to terminate the questioning?

A. No.

Q. Or that it was not proper or improper things were being done or anything of that nature?

A. No, not at all.

Q. Now, during the course of the questioning, were rest breaks taken?

A. Yes.

Q. Do you remember how many or how often?

A. I couldn't recall the exact number, there was two or three, we took two or three breaks to get water or go to the men's room.

Q. Now, were you present when Mr. Kaplan gave the statement of rights that Mr. Garifo read from the transcript?

[fol. 266] A. Yes, I was.

Q. From what you were able to observe, did Chief Garrity understand that statement?

Mr. Malandra: I object.
The Court: Sustained.
Mr. Aiken: I think that's all.

Cross examination.

By Mr. Malandra:

Q. Now, Detective, this took some seven hours, is that right?
A. Approximately, yes.
Q. Did you have your dinner that night?
A. No.
Q. Did Mr. Garrity have his dinner that night?
A. I don't know.
Q. Then he worked for seven hours without any dinner, is that right, you worked seven hours without any dinner?
A. I did.
Q. Is that right?
A. Yes.
Q. Did you see any dinner being brought in to Chief Garrity?
A. Well, if I may qualify that dinner, me going without it. We had a couple of sandwiches and coffee brought up, and they were offered to Chief Garrity.
Q. Now, do you remember what time that was when you had the sandwiches and coffee brought up?
[fol. 267] A. No, I can't recall exactly.
Q. Do you remember who brought the sandwiches and coffee up?
A. No, I don't.
Q. Are you sure you had sandwiches, Detective Corbin, or was it just coffee?
A. No, it was sandwiches and coffee.
Q. Are you sure?
A. Yes.
Q. But you don't remember who brought it up.
A. No.

Q. Didn't the Chief complain at all at any time about being there some seven hours?

A. No.

Q. You never heard him say anything?

A. He did tell me he didn't have anything to eat after it was over with.

Q. I didn't hear you.

A. He told me he didn't have any supper after the entire thing was over with.

Q. But you did not hear him during the interrogation, say anything about it taking too long.

A. No.

Q. That's all.

(Witness excused.)

[fol. 268] SIDNEY KAPLAN, being first duly sworn, testifies as follows:

Direct examination.

By Mr. Aiken:

Q. Mr. Kaplan, I know you just came in and preliminarily I will explain that we are discussing the matter of the taking of statements of Chief Garrity on the evening of December 4, 1962. I understand that you were the person who interrogated Chief Garrity on that evening.

A. That's correct.

Q. And we have already read, Mr. Kaplan, the statement of rights or warning that you gave to Mr. Garrity before you started the questioning in connection with that statement of rights.

A. Statement of whose?

Q. Statement of rights or the warning that you gave Chief Garrity about not incriminating himself.

The Court: The preliminary statement before you asked questions, explaining the defendant's rights.

Q. Did Chief Garrity indicate any reluctance to answer any questions you were asking?

A. Not in my opinion.

Q. And during the course of the questioning at any time, did he indicate that any reluctance to continue with the questioning?

A. Not in my opinion.

Q. Or that he didn't want to go on with the questioning?

[fol. 269] A. No, he wanted to go on. He did not wish to quit, so to speak.

Q. And during the questioning, did you notice anything unusual about his physical or mental condition?

A. No.

Q. Did he make any complaints about anything that you could recall?

A. Not that evening.

Q. That's all.

Cross examination.

By Mr. Malandra:

Q. This was some seven hours, wasn't it, Prosecutor?

A. About that.

Q. Was it tiring to you to question for seven hours?

A. No.

Q. Do you think you could do that in the normal course of business every day?

A. I don't think I would argue about it. I might, I might not, I don't know, I never tried.

Q. Would you like to do it every day?

A. With Chief Garrity around, I might, I don't know, he's good company.

Q. Did you enjoy Chief Garrity's company?

A. Certainly did.

Q. Now, there were some breaks and coffee breaks, I understand, during the seven hours, two or three breaks, is that so?

A. I don't recall that. It was one break that I remember, I don't know whether I had coffee or not, I don't think I did.

Q. Was there any food brought up?

[fol. 270] A. No, there may have been, I don't know. I don't remember the food. I didn't have any, I know that.

Q. Now, you made a statement on direct examination that he, indicating Garrity, did not wish to quit so to speak. What did you mean by that?

A. Well, I was trying to frame my answer, and I used those words. You asked me whether or not I would do that for seven hours every night or whether Garrity had wanted to quit or anything of that sort. He did not. He wanted to go on.

Q. The prosecutor asked you whether or not Garrity made any complaints that night, and you said he made no complaint that evening. What did you mean by that?

A. Well, I didn't hear any that evening.

Q. Did he subsequently make some complaint?

A. He may have, I don't know.

Q. Did you hear?

A. No.

Q. Did he complain to you?

A. No.

Q. Any time after that?

A. No.

Q. Well, can you explain to me why you said no complaints that evening.

A. He didn't make any complaints that evening. It's very self explanatory.

Q. You did not indicate that he may have made a complaint later?

A. No, no inference like that.

Q. That's all.

[fol. 271] PHILIP J. LARGE, being first duly sworn, testifies as follows:

Direct examination.

By Mr. Aiken:

Q. Captain, I think everybody here knows you, so we won't go through the preliminaries of introducing you. You were present—

The Court: Do you have any objections?

Mr. Malandra: I'm well acquainted with the captain.

The Court: Only as an attorney, not as a defendant.

Mr. Malandra: Strictly as an attorney.

The Court: I'm happy to hear that. I have my own suspicions though.

Q. Captain, I understand you were also present during the taking of Chief Garrity's testimony on December 4th, transcript of which is before you?

A. That's right.

Q. Now, during the taking of the testimony, can you recall anything of any unusual nature occuring of any kind?

A. No sir.

Q. Were you able to observe Chief Garrity's physical or mental condition as far as you could see?

[fol. 272] A. Yes sir.

Q. Anything unusual about that?

A. No sir.

Q. Did he complain in any regard about lack of food, lack of sleep, lack of anything?

A. No sir.

Q. Did he indicate that he wanted to stop the interrogation at any point for any reason?

A. No sir.

Q. That's all.

Cross examination.

By Mr. Malandra:

Q. Now, did you have any coffee breaks that night?
A. Yes.
Q. How many did you have, captain?
A. One or two, I specifically remember one.
Q. Did you have any food brought up?
A. Yes sir.
Q. Did you have some dinner?
A. Oh, only in reference to the sandwiches and the coffee that was brought up.
Q. Now, this took some seven hours, didn't it?
A. Yes.
Q. Can you tell me why, with the assistant prosecutor, Sidney Kaplan, questioning Chief Garrity, why was it necessary to have John Corbin, Sergeant of New Jersey State Police and you as the Camden County Chief of Detectives, why was it necessary to have all three of you there?
A. Well, Mr. Kaplan by the Supreme Court was directed to prepare and conduct part of this investigation. Detective [fol. 273] Corbin was assigned by the attorney general's office to come to the Camden County prosecutor's office to assist in the investigation and I was instructed by Mr. Heine, the Prosecutor, to assist Mr. Kaplan in the investigation and preparation of the case.
Q. Well, actually neither you nor Mr. Corbin said one word on the record that night, did you?
A. Mr. Kaplan conducted the interrogation.
Q. I asked you and Detective Corbin, did you put one word on the record that night?
A. No sir.
Q. So that you actually were of no value to the record that night, were you?
A. Only in the assistance of Mr. Kaplan, that's all I could say.
Q. Well, did you frame questions for Mr. Kaplan?
A. No sir.

Q. Did you write questions down for Mr. Kaplan?

A. No sir, not to my knowledge.

Q. Did Detective Corbin write questions down for Mr. Kaplan?

A. Not to my knowledge, no sir.

Q. Mr. Kaplan was quite capable of questioning himself, wasn't he?

A. Yes sir.

Q. So that you and the detective had nothing to do there but to lend atmosphere, is that right?

A. Well, there was a question involving tickets, complaints, and matters like that.

Q. Now answer my question.

The Court: He is answering your question. Let him answer. He is explaining to you certain matters such as this, so answer the question.

[fol. 274] Q. Were you just there for atmosphere?

A. No sir.

Q. But you took no part in the questioning, either you or Detective Corbin?

A. No sir.

Q. That's all.

Redirect examination.

By Mr. Aiken:

Q. You were there to help Mr. Kaplan, weren't you?

A. Yes.

Q. So was Detective Corbin, wasn't he?

A. Yes.

Q. And do I understand that you had a very large stack of tickets?

Mr. Malandra: I object. There's no testimony at all concerning that and it's not proper re-direct.

The Court: I shall rule that because we have gone into the business of the statute, he occupied at the time he was present, in fact, I think you didn't say this, but I got

the impression that perhaps the gentleman from the state police and that Captain Large were there more from the standpoint of window dressing shall we say. He said he was there to assist Mr. Kaplan. Now, what the Prosecutor is saying well, in what nature or how could you assist him. You were merely limiting it to him. Now, he said no, I didn't do that and he already said to you that I was there to assist him. It may have been that he could've assisted him in some other capacity besides preparing the questions [fol. 275] because even you said the captain was capable of preparing his own questions, and didn't need aid from the state police gentleman.

Q. Tell us, captain, what was the nature of your help or assistance to Mr. Kaplan that evening?

A. Well, there was some hundred fifty to a hundred and sixty complaints, summonses, and receipts, that had been removed from the Borough of Bellmawr court that Chief Garrity was being questioned by Mr. Kaplan about and—

The Court: Well, may I offer a suggestion, when you have this other given that you make your answer a little bit different concerning this. Now we're fooling around here with only about seven or eight particular tickets so let's not turn around and start throwing around figures of one sixty, one seventy or one eighty. It's been my own experience regardless of what the court may say to the jury, when they hear big figures or something they might figure, well, he's involved in a hundred fifty, he must be in this, so I would suggest because, well, this won't bother me, it's purely a legal appraisal as far as the statements are concerned, but I think that if you answer that question by saying that you had in your possession certain tickets because I'm afraid if you start hollering out a hundred eighty tickets, I'll specifically tell the jury right there and then, I'll straighten it out immediately because I have an obligation to protect the defendant's rights too. I would prefer to keep my nose out of it if at all possible. I think you can see the merit to that, Prosecutor, so instead of hollering for

this, that and the other thing, I'll give the charge to the jury as soon as you get done and I'm quite sure that the state will not appreciate the charge in view of the fact that [fol. 276] I feel it is in the nature of something that may violate the rights of this defendant and as long as I'm sitting here, I'll protect them together with the rights of the state as I see it. Continue. It's merely a suggestion.

By Mr. Aiken:

Q. At any rate, you were there to assist Mr. Kaplan with the many details involved?

A. Yes sir.

Q. And so was Detective Corbin, wasn't he?

A. Yes.

Q. That's all.

The Court: You may step down.

Mr. Aiken: That's all I have in regards to that statement, Your Honor. If you want to go on to the next one, I'll recall Mr. Garifo.

Lawrence Garifo, having been previously sworn, testifies as follows:

Direct examination.

By Mr. Aiken:

Q. Now, Mr. Garifo, let's refer to the statement of Mrs. Naglee which you took part of, I believe, from page 58 on.

A. Yes.

Q. Of course, you weren't there when the preliminary [fol. 277] statement was given by Mr. Kaplan to Mrs. Naglee, were you?

A. No sir, I wasn't.

Q. All right, and I think you said you relieved Mr. Albert about 4:30 or so that afternoon.

A. Roughly.

Q. And how long did the taking of the remainder of the statement take, do you have any idea?

A. Approximately an hour to an hour and a half.

Q. Now, during that period of time when you were taking Mrs. Naglee's statement of the questioning of Mr. Kaplan, did anything unusual occur?

A. No sir.

Q. Did she indicate she wanted to stop or take a rest or anything of that nature, because of her physical condition?

A. Not that I recall but if she did it would be in the record.

Q. And did anything of an unusual nature happen as far as you can recall during your service there as a stenographer?

A. No sir.

Q. I think that's all.

Mr. Malandra: No questions.

Mr. Aiken: Just one question, Mr. Garifo, during the time that you were questioning, taking the testimony, did anybody talk to Mrs. Naglee about her heart condition?

A. No, the only time I recall about the heart condition was back in Bellmawr as I told you yesterday.

The Court: You may step down.

[fol. 278] Mr. Malandra: May we have a five minute recess, Your Honor?

The Court: By all means.

(A short recess is taken.)

FRED W. ALBERT, JR., being first duly sworn, testifies as follows:

Direct examination.

By Mr. Aiken:

Q. Mr. Albert, I understand that on December 5th, you were the Certified Court Stenographer that started taking the testimony of Mrs. Naglee in the Prosecutor's office.

A. That is correct.

Q. And I wonder if we can dispense with Mr. Albert's qualifications.

The Court: Yes, I think as far as Mr. Albert is concerned, in fact I think you were chief of the local court stenographers at that time, of the three counties.

Mr. Albert: Not at the time I took these.

The Court: Well, let the record show that he was qualified to act as a Certified Court Stenographer in the capacity of which he is acting, and that he is agreeable to the attorney for the defendant and the defendant, without formal proof.

[fol. 279] Q. Now, Mr. Albert, at the commencement of the questioning by Mr. Kaplan, was there a warning or statement of the defendant's rights given to her, in your presence, and did you transcribe that statement?

A. Yes I did.

Q. Will you read that statement to the court, please.

A. Question propounded by Mr. Kaplan as follows: "Mrs. Naglee, to get this matter off the ground, I would like to question you about certain summonses and I want to inform you I am the Assistant Prosecutor and that this office is working under a Supreme Court order dated last June, directing originally the Attorney General of New Jersey to investigate the Municipal Court of Bellmawr with reference to irregularities in the handling of motor vehicle matters, and the Supreme Court has further instructed the Attorney General to submit the case to the

Prosecutor of Camden County for further investigation. I want to ask you some questions, but before I do, I want to advise you anything you say must be voluntary and of your own free will and accord, without any threats, promises, or coercion and anything you say may be used against you or against any other person in any subsequent action, and you have the privilege of refusing to make any disclosures which you feel may incriminate you. Do you understand that."

Q. What was the reply to that?

A. The answer and reply was: "Yes."

Q. Now, Mr. Albert, during the questioning in which you participated, were you able to discern or see anything unusual about the physical or mental condition of Mrs. Naglee?

A. No I was not.

Q. Do you recall either before the commencement of the interrogation or during the interrogation whether there [fol. 280] was any reference to her physical condition by Mr. Kaplan or anyone else?

A. Not in my presence.

Q. And do you recall anything of an unusual nature occurring, anything unusual of any kind that you can recall during your participation in the questioning?

A. I recall nothing unusual.

Q. Did she indicate any reluctance to proceed with the questioning at any time?

A. Not in my presence.

Q. That's all.

Cross examination.

By Mr. Malandra:

Q. Was there any mention, Mr. Albert, by anyone concerning the heart condition that Mrs. Naglee had?

A. Not in my presence, Mr. Malandra.

Q. That's all.

The Court: That's all.

(Witness excused.)

[fol. 281] SIDNEY KAPLAN, having been previously sworn, testifies as follows:

Direct examination.

By Mr. Aiken:

Q. Mr. Kaplan, in relation to Mrs. Naglee's statement, you conducted that also on that date following the interrogation of Chief Garrity.

A. I did.

Q. And you gave the warning statement of rights to Mrs. Naglee that Mr. Albert read?

A. I did.

Q. And then you continued with the interrogation both while Mr. Albert was there and Mr. Garifo was there?

A. Yes.

Q. And during that period of time, did Mrs. Naglee make any complaints about her physical or mental condition?

A. No.

Q. Do you recall having any conversation with her concerning physical condition?

A. Well, before we went on the record, I discussed it with her. I told her I had been advised that she had a heart condition and if she felt she wasn't able to go on, she wasn't under any compulsion to go on, and she said she wanted to go on and I think at least once during the interrogation I stopped and asked her whether or not she felt as though she could go on and she said yes, I can, she made some comments about it that she wanted to go on.

The Court: And that's on the record, is that correct?

[fol. 282] The Witness: Yes, that's at least once.

Q. And, other than what you mentioned, was there anything else observable that was unusual in the nature about her physical condition?

A. No, she showed no distress at all. She joined in and went along.

Q. And there was no unusual proceeding of any kind while the interrogation was going on?

A. What?

Q. Was there anything of an unusual nature that occurred during the questioning?

A. No.

Q. That's all.

Mr. Malandra: I have no questions.

(Witness excused.)

JOHN F. CORBIN, having been previously sworn, testifies as follows:

Direct examination.

By Mr. Aiken:

Q. Detective, were you also present during Mrs. Naglee's questioning by Mr. Kaplan?

A. Yes, I was.

Q. Were you present when the conversation between Mr. [fol. 283] Kaplan and Mrs. Naglee occurred about her physical condition?

A. Yes I was.

Q. And is your recollection about that conversation the same as Mr. Kaplan's?

A. Yes sir.

Q. And were you present during the questioning?

A. Yes I was.

Q. Did anything of an unusual nature occur?

A. No.

Q. Was there anything unusual that you could observe about her physical and mental condition?

A. No.

Q. That's all.

Cross examination.

By Mr. Malandra:

Q. Did you participate in the questioning?
A. No.
Q. Did you ask any questions at all of Mrs. Naglee?
A. I don't recall whether I asked any questions or not.
Q. You were there and Captain Large was there.
A. Large was there, yes.
Q. That's all.

The Court: That's all.

(Witness excused.)

[fol. 284] FRED W. ALBERT, JR., having been previously sworn, testifies as follows:

Direct examination.

By Mr. Aiken:

Q. Mr. Albert, I understand you also took a similar statement from Edward Virtue, on December 7th, 1962.
A. Yes I did.
Q. And who was present during the taking of that statement?
A. Sidney Kaplan, Esquire, Assistant Prosecutor, Captain Philip J. Large, and John Corbin.
Q. And that, as I understand it, was also taken in the Prosecutor's office?
A. Yes.
Q. And was a statement made by Mr. Kaplan at the commencement of your interrogation to Virtue?
A. Yes.
Q. Will you read that statement to us?
A. Yes. By Mr. Kaplan: "Now, before we begin, I want to advise you anything you say must be voluntary, of your own free will and accord, without any threats, promises,

or coercion, and anything you say may be used against you or against any person in any subsequent proceeding in the courts of our state. You do have the privilege under our laws to refuse to make any disclosures which you feel may tend to incriminate you. You understand that?" Answer, "Yes." "You further understand this investigation was first undertaken by the Attorney General by Budd Rigg, and by direction of the Supreme Court, it has been [fol. 285] handed to us to possibly fill in some gaps. And this is why we are here, and I think the best we can do is to proceed with these tickets as background information. I will read what your testimony was earlier. I don't think there is any sense in doing this in Question and Answer form. At one point, you were discussing with Mr. Rigg the practice of altering the summonses in Bellmawr, and you answered you were aware of the alterations and Mr. Rigg asked you whether or not he was correct in his assumption you participated in this practice of altering tickets, and you answered it was just your own, and then in question form, he understood there was an apparent practice or policy or procedure which had grown up or had been set up in Bellmawr in the police department, whereby no alteration should occur without approval of the Chief, and you answered you also went to the Chief and the questions and answers went that way up to a point, and your own tickets, you took care of yourself and you had no recollection of taking care of other tickets of other officers." Answer, "That is correct."

Q. All right, now, after the warning was given, did the questioning begin and how long did it take you, do you have any idea, Mr. Albert?

A. I don't know whether the record—the record does not show the longevity of the questioning, but there are—

Q. But as far as you can recall or tell, was it an unusual length?

A. I would say at least two hours.

Q. All right, and during that time, did Mr. Virtue indicate any reluctance of any kind to continue with the questioning, as far as you can recall?

A. No.

Q. And as far as you can tell, his physical or mental condition appeared to be normal?

[fol. 286] A. He was entirely composed.

Q. And nothing of an unusual nature occurred during the questioning?

A. No.

Q. All right, that's all.

Mr. Malandra: No questions.

(Witness excused.)

Mr. Malandra: Your Honor, for the record, I would like to make the same objection to the initial statements made here in the Virtue statement, as was made to the statement that was taken down by Budd Rigg on November 10th, 1962.

The Court: All right, the objection of course, insofar as in any manner whatsoever that refer to the preliminary statement of questioning of Officer Virtue by Mr. Kaplan will be entered upon the record. And, may I say I would in my own opinion, I would give wide latitude to all of these objections and their considerations as far as relationship to this particular preliminary statement is concerned.

[fol. 287] SIDNEY KAPLAN, having been previously sworn, testifies as follows:

Direct examination.

By Mr. Aiken:

Q. In relation to Mr. Virtue's statement where you also do the questioning, you gave the warning that Mr. Albert just read to the court?

A. I did.

Q. And during the questioning at any time did Mr. Virtue indicate that he did not wish to proceed for any reason?

A. No.

Q. And did any unusual or exceptional occurrence take place during the questioning?

A. No.

Q. And do you recall approximately how long it took?

A. I would say about two hours.

Q. And at any time did Mr. Virtue make any complaints of any kind?

A. No.

Q. That's all.

Mr. Malandra: No questions.

(Witness excused.)

[fol. 288] JOHN F. CORBIN, having been previously sworn, testifies as follows:

Direct examination.

By Mr. Aiken:

Q. Detective, you were also present during the questioning of Mr. Virtue by Mr. Kaplan on December 7th?

A. Yes I was.

Q. And did you hear Mr. Kaplan give the warning that Mr. Albert read into the record?

A. Yes I did.

Q. And after that warning, did at any time Mr. Virtue indicate any reluctance to proceed with the questioning?

A. No.

Q. For any reason or did anything appear to you to be abnormal or unusual about his physical or mental condition?

A. No.

Q. Did anything unusual occur during the questioning?

A. No.

Q. That's all.

Cross examination.

By Mr. Malandra:

Q. In reference to this statement, Detective, Kaplan and yourself and Large were all there during this interrogation?

[fol. 289] A. Yes.

Q. And did you participate in the interrogation?

A. No.

Q. That's all.

(Witness excused.)

PHILIP J. LARGE, having been previously sworn, testifies as follows:

Direct examination.

By Mr. Aiken:

Q. Captain, in relation to Mrs. Naglee's statement taken on December 5th, by Mr. Kaplan, you were present?

A. Yes I was.

Q. And now before this statement was taken, do you recall hearing any conversation between Mr. Kaplan and Mrs. Naglee concerning her physical condition?

A. I recall there was some conversation as to how she felt and whether she thought she was well enough to make the statement that Mr. Kaplan was going to take and she stated she was.

Q. Now, during the questioning, did anything unusual occur?

A. No sir.

Q. Did Mrs. Naglee indicate any distress of any kind, physical or mental, during the questioning that you recall?

A. No sir.

[fol. 290] Q. Did she make any complaints about anything that you can recall?

A. No sir.

Q. Did she indicate that she wanted to stop during the questioning for any reason?

A. No sir.

Q. That's all.

Mr. Malandra: No questions.

Redirect examination.

By Mr. Aiken:

Q. Now, in relation to Mr. Virtue's statement, you were present during that also on December 7th?

A. Yes sir.

Q. And did Mr. Virtue indicate anything unusual or extraordinary physical or mental symptoms and conditions as far as you can see?

A. No sir.

Q. Did he indicate any reluctance to go through with the questioning?

A. No sir.

Q. Did anything unusual occur of any kind during the questioning?

A. No sir.

Q. That's all.

Mr. Malandra: No questions.

(Witness excused.)

[fol. 291] COLLOQUY

Mr. Aiken: Now, Your Honor, that is all the witnesses that I have in relation to all the statements.

The Court: The state has rested their case then, as far as the voluntariness of the confessions.

Mr. Malandra: May I have, at this point, a few minutes recess?

The Court: Surely.

(A short recess taken.)

Mr. Aiken: I think, Your Honor, for this purpose we should start with the earliest statement taken by Mr. Rigg and I will indicate the pages to the court that I am interested in.

The Court: All right, supposing we first do this, Mr. Aiken, I understand that Mr. Malandra is not going to put on any witnesses to attempt to contradict the witnesses put on by the state, as far the admissibility of the statements

are concerned from a legal standpoint. It being understood, however, that he reserves the right to object to certain parts of the statement on the grounds that regardless of the voluntariness of the confessions or anything else, they still will not be admissible into evidence for other reasons, being immaterial and irrelevant to the issue being tried. Under the circumstances, therefore, the Court will at this time rule that from a legal standpoint, all of the statements made by the defendants both to the Deputy Attorney General, Mr. Rigg, and to the Prosecutor, Kaplan, are admissible into evidence from a legal standpoint, it being un- [fol. 292] derstood however, that there are certain reservations concerning the total content of the statements, and now counsel has agreed that the court in the absence of Mr. Garifo, who formally took the notes, shall read the various statements, the portions that both the state and the defendant feel are inadmissible will be ruled upon by the court. The various written statements will then be read with the portions that the court has ordered to be deleted therefrom, and then when the various statements are read in front of the jury, those portions of course, will not be read. Now, is that an understandable statement as to what counsel has agreed with the court to do, as far as the statements are concerned?

Mr. Malandra: Yes.

The Court: Understand further that we have a scarcity of statements due to the fact that Mr. Garifo, I assume, has one or two with him. We tried to get a hold of him, but he has been excused until two o'clock, and hence under those circumstances, we are kind of short on the business of statements. However, the defendant has agreed to use the one statement at this stage of the proceeding, is that correct?

Mr. Aiken: Yes, Your Honor.

The Court: I am reading, gentlemen, from the top of page 62 on the statement given to Deputy Attorney General Rigg, on Friday, November the 10th, 1961, at Bellmawr,

New Jersey. "Edward Virtue, having been duly sworn, was examined and testified as follows: By Mr. Rigg: Question: You are a Sergeant? Answer, Detective. Ques- [fol. 293] tion, As you know by now, Detective, I am working under a Supreme Court order issued last June directing me to investigate certain irregularities in the handling of motor vehicle matters in the Municipal court here in Bellmawr, together with various persons having any connection with the court, including the police department. That is why I scheduled this day, to ask you questions pertaining to this investigation.

"Before I do, I want to advise you anything you say must be voluntary, of your own free will, without threats or coercion or promise or reward, and anything you do say may be used against you or any person in a suit, subsequent criminal proceeding or proceedings in the courts of our state. You do have under our statutes as you may know, a privilege to refuse to disclose any matters which may tend to incriminate you; however, if you make such a disclosure with knowledge of this right and without coercion, you thereby waive this right or privilege with regard to any phase of this investigation.

"This right or privilege that you have is limited to the extent that you as a police officer when sworn and asked questions pertaining to your office and your conduct therein, if you refuse to answer, you then may be subject to a proceeding to have you removed from the department. Answer, Right. Question, How long have you been on the Bellmawr Police Force? Answer, Total of about eight years; four and a half years regular, the rest as a special officer. Question, How long have you been a detective? Answer, About three months. Question, Now I assume that you are aware of this specific problem about which this investigation is concerned here? Answer, Yes. Question, I also assume that you are aware of the practice of alterations of motor vehicle summonses here in Bellmawr? [fol. 294] Answer, I am aware of the alterations. Ques-

tion, Yes? Answer, Yes. Question, Am I correct in my assumption that you participated in this practice of alteration? Answer, Yes. Question, Would that participation be in relation to summonses issued by you and other officers or just in relation to your own? Answer, My own. Question, Did you in the years that you have been on the force at that time, seek to have a summons issued by another fellow officer altered? Answer, No. Wait a minute let's go back. Now. You say in my whole course as a police officer? Question, Yes. Answer, It is possible that I might have went to another one, but to be specific, I couldn't answer that. Question, Why? Answer, Well there is a lot of tickets. Question, Is there a lot of ticket fixing? Answer, Well, I mean, you see what you have there. Question, You are saying you don't recall ever seeking having a ticket issued by a fellow officer on this department altered, is that what you are telling me, you don't recall it? Answer, No. Question, Have you ever sought the alteration of tickets by officers in departments other than Bellmawr? Answer, No. Question, From what I have been told here this morning, I understand that there is an apparent policy or practice or procedure which has grown up or been set up in Bellmawr in the police department whereby no alteration should occur without approval of the chief, is that correct?"

Mr. Malandra: I object to that answer, Your Honor.

Mr. Aiken: The objection is well taken if it applies to the other two defendants, Your Honor, but as to Mr. Virtue, I think it can go in.

The Court: Well then, as far as we are concerned, [fol. 295] gentlemen, this part is out. From where it says Question, "What I have been told here this morning," down to the answer, "We always went to the chief," is out. The court has ruled that that part of the statement on page 65 where it starts Question, "From what I have been told here this morning", that the rest of that question and the answer given. "Yes we always went," is stricken and will

not be read by the person reading the statement to the jury. Continuing. "Question, And, in cases where a particular officer seeks the alteration of a summons issued by a fellow officer as opposed to his own, it is my understanding from what I have learned that it is not only cleared by the chief, but it must also be cleared by the issuing officer," that is out as too general. "Answer, if an officer comes to me and asked me about somebody else, it was always O.K. by the chief first." That is out. "Question, It wouldn't be okayed unless you okayed it also? Answer, That's correct." That is all out.

I think gentlemen, we are to understand from what counsel just stipulated that the questions are to be directed to, and I'm in no way being critical of Mr. Rigg, please because the statement in my opinion is fair, I don't think you tried to put anybody in the middle, all you tried to do is carry out your job decently and intelligently and that may I say for the record is, I think true.

"Question, Were you issued a summons and another officer wanted a favor done, it would have to have two approvals, the chief's and yours," that is out. The answer is out. "Question, I assume that other officers then on this force have asked you to consent to an alteration on a summons issued by you," all that is out. The answer is out. "Question, you can say that they have. Answer, Well you were asking me did they. Question, Yes. Answer, Come to [fol. 296] me and ask me to fix a ticket. Question, Yes. Answer I truthfully cannot say that they have and I can't say that they haven't. Question, You don't recall that happening? Answer, No sir. Question, So that the only recollection that you have, the only recall you have in relation to summonses issued by you, which were ultimately altered, is where they were done to your initial request. Answer, Yes."

All of the rest of that page is out. So that the whole of page 66 is out.

"That is the only recollection you have. Answer, Yes. Question, Do you recall whether anyone other than a police officer has ever come on your department? Answer, Other than a police department? Question, Yes. Answer, The individuals who have the tickets. Question, Did you recall any case where an intermediary has acted on behalf of an individual who has a ticket? Answer, There have been several occasions. Question, And in some of those cases, were they officers in other departments? Answer, Possibly, yes. Question, And were they in some cases local officials? Answer, No. Question, In no cases you could recall where a local officer was involved? Answer, No. Question, That would be either elected—" That whole page of 67 is out.

Mr. Aiken: Your Honor, I think that we're going to run into quite a bit of this type from now on. If I may make a suggestion at this point, for my purposes we can ignore everything up to page 122 and 123.

The Court: Fine, thank you for your cooperation, sir. That is more than satisfactory to you, Mr. Malandra, I would assume. Let me again state, however, that this is no way of being critical of the Attorney General, he was sent [fol. 297] down there to make an investigation. He made what I deem to be an honest and capable investigation and every one of these questions that he asked and every one of the answers that he received is pertinent to the job that he was doing. He had a perfect right to ask all of those questions. He made his investigation, he turned it in, when the matter comes to the court however, even though he has made a very, very thorough investigation which included many other matters besides the one for which likewise was his obligation to do, we are now faced with a different proposition, the particular indictment which the Grand Jury found which he had nothing whatever to do with. That is ordinary criminal procedure, it is criminal investigation and as I say again, and I want the record clear, that this court, and I don't think the attorneys either, are in any ways critical of the job that you did, Mr. Rigg. We

are limiting much of your investigation by the fact that we have this specific indictment charging the crime of conspiracy and I think counsel has among themselves, agreed without going into a lot of different arguments concerning the voluntariness of the statements, that the statements in themselves shall be directed at the eight matters as set forth in the indictment as far as overt acts are concerned. Now, to page 122.

"I show you complaint number 5157 issued on October 4, 1959, to Robert T. Killian, charging the defendant with driving while under the influence, which charge was thereafter changed to 39:4-85, receipt of fine showing five dollars and costs of five dollars for passing on shoulder, and indicates on the back that it was apparently done in court. Do you recall that? Answer, No sir, I don't recall, I don't remember. Question, Approximately how many drunk driver summonses do you issue in a year? Answer, I can't answer [fol. 298] that question. Question, Approximately? Answer, I couldn't answer that. Question, Twenty? Answer, Maybe. Question, All right, now, I have a group here, detective, of summonses where it involves an apparent decrease in the amount of speed originally charged."

Mr. Malandra: I object.

Mr. Aiken: That question comes out, Your Honor, just to the end of maybe.

The Court: All right, "I have a group," and now where do we go from there?

Mr. Aiken: Then we go into Mrs. Naglee's statement.

The Court: Then you have various other people who are not in this case. Are we all done then with this particular one, then I can write on here, stop, do not read further from this statement, is that correct?

Mr. Aiken: From Mr. Virtue's statement.

The Court: Well, that's the one I'm reading from. Well, I'll make this notation, and incidentally, we'll check this with Garifo before we get started up again so we all know what is in and what is out and let's further make this deal

now. If there is some dispute between you and Mr. Malandra as to what is in and what is out, my books shall govern: Is that agreed?

Mr. Aiken: Agreed.

[fol. 299] Mr. Malandra: Agreed.

The Court: Stop here, do not read further, go to Naglee's statement.

Mr. Aiken: Page 197.

The Court: All right, begin here. "Helen B. Naglee, having been duly sworn, was examined and testified as follows. By Mr. Rigg. Question, Mrs. Naglee, as you know, I am working under a Supreme Court order dated this last June, whereby or whereunder I am directed to conduct an investiagtion of certain irregularities in the handling of motor vehicle cases in the Municipal Court and apparently the police department here in the Borough of Bellmawr and it is pursuant to that order, that I have asked you to answer some questions which I want to put to you. Before you do however, I want you to be fully aware of the fact that anything you say must be voluntary and of your own free will, and of course without any threats, promises, or reward or any coercion. You do have a privilege to refuse to make any disclosures or give any answers which may tend to incriminate you. Things that you tell me may be used against you or any other persons in a subsequent criminal proceeding. That is why you have that privilege under the law. However, if you do answer a question in making a disclosure, by so doing you thereby waive the right or privilege that you have in relation to your entire investigation. You understand that? Answer, I do. Question, And understanding that, are you willing to proceed then? Answer, Yes. Question, All right. Now, am I correct in my understanding that you are the Violations Clerk here in the Borough of Bellmawr? Answer, That is correct. [fol. 300] Question, And you are also the court clerk, Answer, That's right. Question, How long have you been the court clerk? Answer, 1947. Question, Continuously?

Answer, No, six months in 1960, I was replaced by Mrs. Ferry. Question, As court clerk? Answer, Yes. Question, And did Mrs. Ferry carry then the duties and responsibilities and functions as such? Answer, She didn't have the full responsibility. You never have at the request of the judge, to have my books audited before I turn them over to her, and they never seen fit to have that done, so I continue handling the books, but she sat in court and then she would come in the next morning and go over, and I came out at night to lock up the monies that were taken in because she didn't have that authority. Question, Taking the money or locking up? Answer, See, the lock, she didn't handle this money, finally Mr. Lee was deputized to accept the fine rather than have it collected in the court, so then I wasn't allowed in court, so I would after the funds came in, I would take them then and then I would lock them up. Question, You say you weren't allowed in court, what do you mean by that, an order you couldn't go into the courtroom? Answer, There was a few of the councilmen were against me being the court clerk, and it was they that were lax in not having my audit taken. Mr. Smiley was the new auditor that year and he insisted I call Mr. Aiello and he also said the books should be audited before I turned them over. They never saw fit to have it done, so I never turned the books over. I was responsible until they were audited. Question, Did those councilmen tell you or any of them tell you you couldn't go into the courtroom? Answer, I couldn't sit, I wasn't on the bench when the people came out. Instead of Mr. Lee collecting the fine, I collected them. Question, Am I correct in understanding all Mrs. Ferry [fol. 301] did was sit in court? Answer, She sat in court and then she came back the next day and she made entries in the docket. We don't do it after court, because it was late and the next day she would come back and make entries in either the ticket docket or the criminal docket and also made out the monthly reports. I assisted her with that. And if there were to be any warrants issued, I did

show her how to make a warrant and how to send them out. And I let her make out the final notices. You know, when they don't appear. Question, Could you tell me what six month span that was in 1960, when did it commence, approximately? Answer, She was sworn the 28th of April, and I think she took over the 15th of June. It took that long before they replaced me. Question, So she would have served then from the 15th of June— Answer, Until December the 31st. Question, Then you went back to your normal function as court clerk? Answer, That's right. Question, During the six month span, when from the 15th of June to January 1st or the 31st of December, you say she made the entries in the court docket? Answer, That's right. Question, That would be the motor vehicle or the traffic docket and the criminal docket? Answer, Yes. Question, Did you make any during that six month span in the docket? Answer, Yes. Question, Now then, which ones did you make and which ones did she make? Was there any agreement as to how that was to be handled or what? Answer, She made some and I made some during that time. Question, Now which ones would she make? Did she make all of those which came into court during her six month period? Answer, She didn't make any receipts at all. Question, No, did she make the entries in the docket book after their disposition? Answer, After a court night, yes. Question, She would enter anything that happened in court? Answer, Yes. Question, During the daytime that [fol. 302] people came in and paid the fines that were handled through the violations bureau instead of by way of hearing, did she enter any of those? Answer, No, because she wouldn't be there for that; she only came back to do the court work, which had taken place in court, and then she would go home. Question, You had taken the fines as violations clerk and then you would enter them in the book as court clerk? Answer, Yes. Question, And you never turned any of those over to her to handle? Answer, No, and she only made the green cards that took place in

court. She never did anything with the violation. Question, And my last question along these lines, do you know, did she make any false entries pursuant to the operation which was going on there of altering summonses? Answer, No, she did not. Question, Not to your knowledge? Answer, No. Question, Do you know, Mrs. Naglee, was she aware that this was happening or was there an attempt to keep this from her? Answer, Well, you would have to ask her that, because I wouldn't know. I didn't make any bones about it. I didn't, I made entries without consulting her, because I didn't feel I needed to consult her. To me, she still wasn't a court clerk, because I was still doing the work. What she done was little trivial things, she didn't have the responsibilities because they didn't see fit to do it. Question, Well my question again, perhaps it was two-fold and maybe ambiguous. Did you affirmatively attempt to keep her from knowing that these alterations were occurring? Answer, No, I just did what I did in ignorance of her, because as she would come in in the morning and we'd have them, our receipts are numbered, and that is the way, you know, and the T number, that is the way she would enter it into the docket. And then when she was doing that, I would start to make the disbursements, either went [fol. 303] to the state, county or borough. Question, You say during that six month period she made up the reports for the judge, is that correct? Answer, With my assistance, she never caught on to it. You mean the monthly reports? Question, Yes. Answer, She couldn't do it on her own, she never could grasp it. I made samples that the state gave us, but she never grasped those to do on her own. We worked it together. Question, What is shown in the monthly report? What data goes into the monthly report? Answer, Do you mean the state, county or the one that goes to Mr. McConnell? Question, The one that goes to Mr. McConnell. Answer, The fines and costs that were taken in in traffic. Question, Was it all traffic, does it show all the traffic fines? Answer, Yes, fine and cost goes in one

column; and Borough parking in another column and criminal go in another column. Question, Now, how were these figures compiled and placed in the columns, where they done by reference to the summons and complaints, would you have those together for the month and then go over those and enter them into the report? Answer, Well, we always kept a work sheet on what took place in court. And then broke it down with the ticket control, where you have to refer back to the ticket control, the ticket that was issued and then it was disposed of. Question, What I'm getting at, is there specific and direct reference as double checked to the summonses when that report is made up? Answer, I don't know what you mean. You mean take a whole month's tickets? Question, That's right. Answer, Well, you have your disbursement book, you would refer to your traffic ticket book and then we transfer the monies in the traffic cash book to the regular disbursement book we carry two sets of books. Question, During the course of [fol. 304] working with you and making up the monthly reports, would Mrs. Ferry have had occasion to see the summonses for the month? Answer, Yes, she'd want to see them, they were there, they were always available to her. Question, They were available? Answer, Yes they were. Question, Now, in the course of her doing this, would she have referred to them, other than being available, would she naturally go to them or did she? Answer, She would have no use because she didn't handle the monies. Question, So that you don't know whether she ever saw any of these? Answer, No. Question, She wouldn't normally in the normal course of functioning as court clerk? Answer, No, not what her duties were. Her duties were to be the whole thing. Question, But she just never assumed them? Answer, Mr. Stanton was going to see that the books were audited, but for some reason, he never came around and I told Mr. Aiello, and he said definitely not to turn the books over to anyone until I had an audit. I talked to Mr. Smiley and he told me the same thing. The judge talked

to Mr. Stanton and asked him would he see the books were audited so they would be turned over, so they never did it, and I wasn't going to get on my knees and beg them. Question, Did you have any objection to Mrs. Ferry taking over the position as court clerk? Answer, The woman, personally, no, I felt very sorry for her. I was a little resentful for it, they did it for spite. Question, That would be these councilmen? Answer, Yes, I felt it was done for spite. Question, Would you feel, reflecting back over the last six months, do you feel, subject to this resentment which you naturally felt, that you cooperated with her? Answer, Believe me, I tried to show her everything that I could show her so she could never say I wasn't showing her, and on the back of the tickets—can I touch this? Question, [fol. 305] Yes. Answer, Where it would be like, here, like you know, it would be in here or sometimes if she would copy, just to make the green cards, it would be like I will say James Lee, they put on here J. L., H. B. N. or J. L., H. B. N. whoever collected it. She would be there probably and I would ask her if she would put M. F. and she said no. I said, "You are making out the ticket, that is the reason I am asking you." I am responsible, my initial would be first, because I took it. In case there was any reference as to why her initial would be on there. Question, All right. Now, Mrs. Naglee, going back in your recollection as best you can, can you recall when the conduct of altering tickets first impressed you as occurring with the degree of frequency where it might be determined a practice?"

Mr. Malandra: I object to that, Your Honor.

The Court: All right, we'll take it out. Question beginning all right, now Mrs. Naglee, going back and—

Mr. Aiken: I think we ought to go on to page 215. It gets specific there.

The Court: I think if I may refresh your memory, I think there is specific testimony that in some of these particular cases, I can't remember which that her initials or name or something else were on some of the proceedings which, tying her up in particular to some of the traffic or

other defendants listed in the eight overt acts. Well, I know he was asked whether it meant there was supposed to be Mrs. Naglee's initials in the specific overt act cases. [fol. 306] Mr. Aiken: I think, Your Honor, if we start with the first question on page 216—

The Court: All right. Page 208, I'll put above the stop here and go to bottom of page 215. The reason for that is I think if you start at 216, you do not have sufficient introductory questions or answers to properly understand the fair answer given on 216. We'll start here.

"Question, My question is, Mrs. Naglee, to the extent you did do it, you didn't feel guilt about having done it, when you did it, and was that because you felt that under the circumstances you were morally justified in doing it or did you feel in addition to feeling morally justified that you were legally justified in doing it? Answer, I didn't take that into consideration, I just knew the chief, that guy probably came in for some reason and his wife or somebody told him a fast story, and I was ignorant, I am ignorant, and I changed it. Question, Did you know at that time that it was unlawful to change it? Answer, Truthfully, no, I didn't think it was unlawful. Question, Did you feel that under the law you had the power to do that? Answer, Well, shall I say I didn't have any regrets when I did it. Question, That is not my question. My question is did you feel that under the law you had the power to do that? Answer, I didn't take that into consideration, I just changed it."

Mr. Malandra: I think that's where we should stop, Your Honor.

The Court: I don't think we should stop there and for this reason. I think we should stop at the next question because I think the next question—wait a minute, maybe [fol. 307] you're right. We'll stop then the reading at the end of the following question and answer. "That is not my question. My question is did you feel that under the

law you had the power to do that? Answer, I didn't take that into consideration, I just changed it." Stop there.

The rest of it is all to the merit of the thinking and not the understanding of the law, did anybody ever tell you this was wrong and all of that business, and I think in fairness to the Prosecutor, they have a right to pursue that, even though it is a little bit general. I think by doing that, they're fully carrying out the terms of the stipulation. So I'll go all the way up to the top of 219. The rest of 216 is out. Now we go over to 217, and the first part is out. Now we'll go all the way down to the last question on that page. We'll put on here, start here.

"Question, Now then, what I am trying to ascertain, I am only concerned about you at this time, I will talk to Chief Garrity to the extent you consider him your boss, you knew at the same time that he had no lawful right, did you not, to ask you to change these? Answer, Well, I will tell you the truth, I didn't take that into consideration, he had a right or not a right. I guess you want me to say that he had no legal right, but I didn't stop to think of the legal terms of that offense. I just did what I done and shall I say I am ignorant as to legal rights. Question, No one ever indicated to you, did they, Mrs. Naglee, that this was lawful, that this was in the province of the chief of police and clerk to change summonses? Answer, No, neither did they ever say that it wasn't. Question, Right. Now, Mrs. Naglee, on some of these summonses, as we discussed before, in the space for "Court Action", there are notations of a date where there was purportedly an appearance and a plea of guilty and disposition of guilt, [fol. 308] designation of fine and cost, and the purported signature of the judge. When in fact, of course, the defendant never appeared in court. Answer, That's right. Question, Did you do that? Answer, Yes."

Mr. Malandra: Now Your Honor, that is kind of general and pertains to a lot of different summonses, and not in particular to our case.

The Court: Overrule the objection. I think that is absolutely proper because again the question addressed to it concerning procedural matters. Now, in addition to that, I remember that during the presentation of the evidence on the part of the state, there were certain of these summonses on which her name appeared by way of initial, I think that was the testimony of Saul Teitelman. So, I think definitely this is even though it seems to be general here, it is specifically tied up to the one of the eight overt acts. I don't know which one, but my recollection is to it. Stop here. Now, where do we go from here.

Mr. Aiken: 220.

The Court: How much more is there of this?

Mr. Malandra: A lot more.

The Court: It is quarter after one.

Mr. Malandra: I'm just concerned now about whether the jury shouldn't be told to go home. We won't finish it in two hours today.

[fol. 309] The Court: I don't think we're going to get to the business of taking the testimony. The first thing that would be done anyway would be the reading of this to the jury. I think in fairness to, well, at this point, the state, and to the defendant that they should start on this statement fresh and the reason I say that is this, you see, we start and we only finish a part of it, they're going to forget everything that was said in the beginning and secondly I think it's going to be of great aid and assistance to the jury to have the jury find out what statements these defendants made as for themselves are concerned. The state of course, feels very strongly about that going into the evidence, too, because the consideration, the deliberations of all the factual contentions on both the sides, it would seem to me that the jury is especially interested in what the defendants themselves, have to say. If the state of course, felt that it was no aid to the state in presenting its case, obviously they would not have attempted to have the statements into evidence, so that I think what I'm going

to do, they're not due in yet, but when they do come in at two o'clock, chase them home. I think by the time we finish with all of the other things that we're going to be in a position to start fresh on Monday morning and then nobody gets the advantage because then we have a situation when we will definitely finish it on Monday. Court is adjourned for lunch.

(Luncheon recess taken.)

The Court: When we adjourned for lunch, to the best of my recollection, we had gone on Mrs. Naglee's statement to page 219. And, I think we had taken it to the bottom of page 217, and then we went on the other, even [fol. 310] though it was general, the court felt that it definitely belonged in the statement as explanatory, having to do with matters or procedure, in the fact that her initials did appear on some other papers that have already been entered into evidence.

The rest of that whole page can go out.

Mr. Aiken: I think Your Honor, that we can go to the first question on page 220.

The Court: Continuing.

"Question, To the extent you didn't feel guilty about this, Mrs. Naglee, did you conduct yourself in this area, openly before the judge? Answer, Well, I think I told you before that while the judge probably would be hearing a criminal case or something, I never had any guilt, I just did it on the back while he would be hearing other cases. I never openly showed him or anything like that. Question, Why not? Answer, Well, of course, I did not. Question, I know you didn't, what was the reason for not having done so? Answer, Because he was busy. Question, You are under oath. Answer, I know, and I am telling you the truth. Question, That is the only reason? Answer, I didn't feel it was necessary. I did it and there I am going back to ignorance again, I thought it was perfectly all right to do what I was doing, as long as the Borough got theirs. I

was interested in the Borough, to tell you the truth. Question, You have already said, however, though, again under oath, that you thought it was all right what you were doing, morally but you knew you didn't have the authority to do it. You have told me that. Answer, I have admitted that. Question, Now then, why didn't you let the judge know what you were doing, or did he? Answer, No, I didn't [fol. 311] let him know, no. Question, Why not? Answer, Mr. Rigg, I just didn't tell him. Question, Why? I know you didn't tell him. I am asking you why. Answer, Well, there is only one answer, because I did not. Question, Did you have authority to sign the judge's name? Answer, Yes I do. Question, Do you have his authority to sign his name to disposition record on the back of the motor vehicle complaints? Answer, Well, I had done it, but since June 2nd, he has signed everything, he's got everything, every little detail and everything else. Question, He keeps to himself now. Prior to that time, did you have the authority to fill in the court action? Answer, Many a time I sat there, yes, he would go on with something and I would mark the back of it, and I think you will find some other cases, they are not all legal, but after this investigation started, Saul will have to admit, even for no appearance, I would mark it "No Appearance" while he was working, and I would mark it "No Appearance" and the date so we could send the final notice. But he does all that now. I will be truthful, I don't think he thought that I was doing it. Question, To the extent that he would tell me that you did not have authority to sign his name, that would not be correct? Answer, If he did, that would be the first time. I signed all, with the exception of the monthly statement, and until Mr. Heine became Prosecutor, I signed them up until then for Judge Dzick, for Charlie Rudd, and Carl Auerbach, but when Mr. Heine, the report went in there one time, it was just a joke or something, he said, 'From now on I will sign them.' I would go over it with him and show him what it was. You say as to signing his name, I wouldn't say every day, but if there is a commitment for someone

to go to jail, I signed them all even if he is here, I signed his name and mine as the clerk. If we put someone [fol. 312] in Lakeland, I signed them. He is always authorized me, and all the previous judges. Question, How long has he been a judge? Answer, Oh dear, he finished out. Question, Roughly, approximately. Answer, Five, I don't know. Question, Approximately five years? Answer, Three years is up until July 1960, and he finished out Judge Dzick. He had to resign on account of going on the bench. Question, So it would be four or five years? Answer, Yes. Question, During that four or five years, did he ever ask you to alter one of these summonses? Answer, Did he ask me to alter them? Question, Yes. Answer, No. Question, Never sought it? Answer, No, he did not. Question, Do you recall in the last two years while you were acting as court clerk, in open court, his amending a moving violation to a parking offense? Answer, With him amending? Question, Yes. Answer, No, I know he has amended a ticket, but I don't think he ever amended a ticket to parking. Question, Do you know? Answer, He might have amended speeding or something. Question, Reduced the speed or something predicated upon the evidence? Answer, yes. Question, Do you know, Mrs. Naglee, whether these summonses and complaints were ever altered after they were actually handled in court? Answer, After he heard them? Question, Yes. Answer, No. Question, Have you ever asked the chief of police here whether consideration could be given resulting in an alteration at your request as opposed to one of the officers? Answer, You mean that I— Question, That you acted as the intermediary or interceder? Answer, I don't recall. Question, If you had, would you recall? Answer, I think I would. Question, Have you ever altered a summons or complaint without the chief's knowledge? Answer, No."

[fol. 313] Mr. Aiken: You skip to 228 now, Your Honor.

The Court: Well then, we stop right here. Might I suggest that before half way down the page, there seems

to be a question addressed to the business of bail sets and of course that is in the case. See, there is some testimony concerning bail receipts in the case as far as the eight overt acts are concerned, and I would think that under the circumstances even though this may be general, the matter of testimony concerning the practicing in effect would be relevant.

Well, may I stop and go to the middle of page 228 and I start, continuing, Question, "In relation to the issuance of bail receipts for bail which has been posted by the defendants, I am impressed by reviewing the papers here that very often bail is posted at night when you are not on duty. Answer, Yes. Question, And it would appear that whoever is on the communications or the desk in night, the dispatcher, issues the receipts, am I correct in that? Answer, That's correct. Question, Now, when you come in in the morning, are you then apprised of what has transpired the night before in relation to the posting of bail? Answer, Yes. Question, What do you do? Answer, What do you mean what do I do? Question, What do you do when you are told about it, are you given the money and receipt or what? Answer, Yes. Question, What do you do then? Answer, Well, when we were doing it in triplicate, with those yellow gadgets that you picked up. Question, Yes. Answer, That would be held until the hearing night. But then, now everything is deposited. Question, yes. Did you make a record when these bail receipts were turned over to you and the cash was turned over to you in the morning, did you make a record in any book or permanent [fol. 314] recording of bail? Answer, No. Question, Just put it in what, a drawer? Answer, In a separate folder, the ones that had bail attached to them. Question, Would the cash be right in the folder? Answer, Yes. Question, What would that be attached to, the complaint and summons? Answer, And with the bail receipt. Question, Now then, if a man appeared in, and say he was found guilty, he would take the fine out of the bail and give him the balance in

cash? Answer, On the return of this receipt. Question, And if he didn't have a receipt to return, what would you do? Answer, Well, if found guilty, there will be times when they would say 'I don't have it.' We took care of it that way. Question, Took care of it in what way? Answer, Gave him the official receipt for the fine or cost. Question, And give him the balance, if any? Answer, That's correct. Question, Did you get from him a receipt for the balance of the money? Answer, No, I did not. Question, I assume the same thing could've happened when the man was found not guilty. Answer, It would be returned. Question, He lost his receipt? Answer, Yes. Question, You would give the cash anyway and would you make him sign a receipt or make a notation on the copy of your receipt that he had gotten his money back? Answer, Well, you mean now a man has posted bail— Question, He's been found not guilty, he wants his money back and he doesn't have the copy of his receipt. Answer, Well, he'd get his money back. Question, And would he sign a receipt to protect you? Answer, No. Question, There would be no notation on the yellow copy of the receipt that he would have to sign? Answer, I don't know, you have them. Question, I don't have them all, Mrs. Naglee. Answer, I think the bail would've been returned. Very rarely he would put up bail and got it back. Usually [fol. 315] the bail would have to cover the final costs, or else it was a bondsman and, of course, there was no money there."

Now, we stop there, because we're now proceeding into another matter which is not one of the eight overt acts.

Mr. Aiken: That's right. I suggest you skip to 241. I might say to the court that on that page and page 242 and 243, all of that material will finally end up to—

The Court: I'm going to start to read here, and then go down to the bottom, is that correct?

Mr. Aiken: Yes.

The Court: Continuing.

"Question, Mrs. Naglee, in any other cases involving alterations of summonses, has this procedure been followed to your knowledge, of accepting bail and then applying that bail to the fine? Answer, You mean dividing it between the traffic and making it disorderly? Question, Yes. Answer, Well, there's been a couple of cases, I don't know. Question, Well, there was a case involving a Philadelphia resident, wasn't there? Wasn't there, Mrs. Naglee? Answer, Was there? Question, I'm asking you. Answer, I will have to go over there and look. Question, I'm asking you whether you recall. Answer, Ridiculous. Question, What was that? Answer, What do you want to know? Mention the name and I will tell you whether the name sounds familiar. Question, No, do you recall Mrs. Naglee? Answer, Let's see, you mean Mr. Stanton's friend. Question, Do you recall a Philadelphia resident who posted bail in a drunken driving offense? Answer, Yes. Question, What happened to the balance of that money? Answer, [fol. 316] It is at the safe. Question, This minute? Answer, Right this minute. Question, With his name on the envelope? Answer, Yes. Question, How many other envelopes do you have in the safe with money? Answer, I have but two." Stop there.

Mr. Aiken: Yes, and go to 245, starting with the question all right.

Stop and go to page 245. Continuing.

"All right, Now, when I was asking about this Philadelphia resident, you said, 'Do you mean Stanton's friend?" Is that Stanton, the councilman to whom you have referred? Answer, Yes. Question, Will you explain the circumstances surrounding that? Answer, Since this job came up I didn't know anything about Mr. Stanton's friend. Question, What have you heard? You mentioned that, why did you mention it? Answer, I mentioned it because I understood he was a friend of Tom Stanton. I had heard since this came up, Tom, that he was a friend of Tom Stanton's and Tom— Question, Interceded on his behalf, is that what you are saying? Answer, No, he did not intercede, Tom tried

to railroad Mr. Garrity, in my opinion. Question, How? Answer, He tried to get something on him. He was so provoked that he didn't make Director of Public Safety, that he is out to hurt anyone or anybody, and to me, I may be prejudice, but I think it was a lot of this and is all done for spite. Question, A lot of which is all done for spite? Answer, A lot of this investigation. I could be wrong. Question, Maybe my inference is not correct. Are you saying I am being spiteful? Answer, No, I don't mean that. I realize you have a job, but I mean I think it was done, I could be wrong, but I have become very prejudice that Mr. Stanton is out to hurt anybody because he made [fol. 317] the remark when he didn't get the Director of Public Safety job, well, nobody was going to be happy being director, so I understand. Question, we are getting a little far afield here. I am not concerned about that. What I am concerned about is why you said, 'Do you mean Mr. Stanton's friend,' and you named the name. I was talking about this Philadelphia resident. Answer, Yes, I understood he was a personal friend of his. Question, Did you also understand that he was looking into this matter with that fellow or what? Answer, No, I didn't hear that. But when I heard that it was a discussion about—I know the envelope is over there, I just don't recall his name. Was it Randolph? Question, I don't know, Mrs. Naglee. Answer, Yes, you do know. Question, I do know? Answer, You do know. Question, I don't have the summons, Mrs. Naglee. Answer, Anyway, I can't recall his name, and I understood that he was a friend of Tom Stanton's; that's all I know. Question, When did you understand this? Answer, Since this thing has been going on. I heard them discussing it. Question, When was that envelope placed in the safe, Mrs. Naglee? Answer, The date is on it. Question, What attempts were made in contacting that defendant? Answer, I believe Chief Garrity asked him if he would return here to our headquarters and bring his receipt, he would give him the balance that was due him. Question, When was this? Answer, Whatever the date is. Question, And then you just

never heard from the chap again? Answer, No, I didn't. I don't know. Question, You don't know whether the chief did but in any event, the money is in the safe. Answer, Yes. To my knowledge, it is still there, because I am the only one that has the combination, so I think it is still there. Question, You say there are just those two that are there? Answer, Yes. Question, I would like to get [fol. 318] those two envelopes and I want to get them marked. You want to take a little break and we will get those?

Mr. Rigg: So far as the questioning is concerned, that will be all. I want to question you again, but it will be some later time.

(Witness excused.)"

Mr. Aiken: Your Honor, I might explain to the court that in connection with those last statements that you read, I can fill in what happened, that they went over and got the envelope that was referred to and it related to Joseph Scott, one of the persons mentioned in the overt acts.

The Court: Is that in some other statement or do you want that continued?

Mr. Aiken: No, that's not in another statement, but I'll fill it in with testimony from Mr. Rigg.

The Court: All right. Well, as far as the actual written statements are concerned, that finishes Mrs. Naglee.

Mr. Aiken: That's right.

The Court: I mean from the ones that you took from Mr. Rigg, not the ones Mr. Kaplan took.

The next one I have before me seems to be Chief Edward J. Garrity with Mr. Rigg interrogating and that's on page 249. Are there specific instructions you want to give to the court?

Mr. Aiken: Well, I think the portions from 249 to 255 is perfectly all right.

[fol. 319] The Court: All right.

"Chief Edward J. Garrity, having been duly sworn was examined and testifies as follows: By Mr. Rigg: Question, Before I get started, because of the lateness of the hour and other commitments, I will undoubtedly have to question you again, as well as Mrs. Naglee and perhaps one or two of the other officers.

I would just like to establish a few things here quickly now. Before I do, however, you and I are aware of the purpose of the investigation of your being here today. Before I ask you any questions concerning this investigation into the alleged irregularities of the handling of the Municipal Traffic Violations by your department, I want to advise you that anything you say must be said of your own free will and accord without any threats or promises or coercion, and anything you say may be, of course, used against you or any other person in any subsequent criminal proceedings in the courts of our state.

You do have, under our law, as you probably know, a privilege to refuse to make any disclosure which may tend to incriminate you. If you make a disclosure with knowledge of this right or privilege, voluntarily, you thereby waive that right or privilege in relation to any other questions which I might put to you relevant to such disclosure in this investigation.

This right or privilege which you have is somewhat limited to the extent that you as a police officer under the laws of our state, may be subjected to a proceeding to have you removed from office if you refuse to answer a question put to you under oath pertaining to your office or your function within that office. It doesn't mean, however, you can't exercise the right. You do have the right. Answer, No, I will cooperate. Question, Understanding this, are [fol. 320] you willing to proceed at this time and answer any questions? Answer, Yes. Question, How long have you been chief of police of the department here in Bellmawr? Answer, About eight years. Question, And were you on the force prior to that time? Answer, Yes. Question, How long have you been on the police department altogether?

Answer, Fourteen years. Question, During that fourteen years, chief, when is the first that this practice of altering summonses started, as best you can recall? Answer, Gee, I don't know, it goes back a few years, but it became more critical as we started using speed watch and things like that. Question, What was that, within the last two or three years? Answer, Yes. Question, Now, am I correct in my understanding from talking with the other officers that it was the practice or the policy within the department here that no summons and complaint can be altered without your consent?"

Mr. Malandra: I more or less object to that, Your Honor, something that he's heard from other people.

The Court: Yes, but he has answered it yes. He can ask him leading questions and all of that and it's up to him. If he says I don't know but my understanding or I don't remember anything else, but he says yes. I'll permit that.

"Yes. Question, So that as far as you know, every altered summons within your files and my files has had to have your consent? Answer, Yes, I would say so, yes. Question, There's been quite a bit of discussion, Chief, by the various persons with whom I have talked today to the effect that they felt or seemed to feel there was nothing wrong with what was going on and what was being done, [fol. 321] but that you as Chief of Police had authority to do this. Do you believe that you had authority to do this? Answer, No. Question, Did you ever say anything to any of the officers to indicate to them that you do have such authority? Answer, No, I did not. Question, Did you ever indicate to Mrs. Naglee, as Chief of Police, that you had the right to downgrade summonses or alter summonses? Answer, I think Mrs. Naglee drew an inference or misunderstanding about the procedure altogether. Question, Why do you say that? Answer, Well, she actually felt every time something happened she would come to me instead of going to the judge with it, anything at all pertaining— Question, I mean in relation to these alterations, did you ever indicate

to her that you had authority as Chief of Police to alter the summonses? Answer, No, I never made it specific that I had the authority. Question, Did you ever do it generally as opposed to specifically? Answer, You mean to alter them generally? Question, I asked you Chief, whether or not you ever indicated to her that you had this authority and you said no, you never told her specifically. Now, did you generally tell her that you had this authority? Answer, No, I don't think I generally didn't. Question, As a matter of fact, she knew you didn't have the authority?"

Mr. Malandra: I object to that part.

The Court: Yes, I agree. Page 253, there will be stricken the question, Question, as a matter of fact she knew you did not have the authority. "Answer, No." I don't understand the answer anyway, and secondly, obviously they're asking him something that I think would be irregular as far as the charges against her are concerned. Just that one individual question and answer are out.

[fol. 322] "Question, You are not laboring or you did not labor under the belief that she as court clerk or violations clerk, had that right? Answer, No. Question, She didn't labor under that belief either, did she? Answer, Well, since this came out, I don't know, it surprised me some of the things I took for granted she knew. As being her job that is, within her capacity."

Mr. Malandra: If Your Honor please, I think I would like to make the same objection to that.

The Court: Well, I think you're right. We'll strike out "she didn't labor under that belief either, did she." Of course, they're asking him to inquire into the mind of Mrs. Naglee, so I think that it is sufficiently dubious in the mind of the court, but I'll strike that too and the answer "Well since this thing come out,—."

"Question, Now, Mrs. Naglee has indicated to me, Chief, that in no case was a summons and complaint ever altered after it was disposed of by the judge at a hearing. Now, does this also run true to your recollection? Answer, After

the judge disposed of it? Question, Yes. Let's assume there is a hearing and the judge made disposition, to your recollection was there ever an alteration subsequent to that time? Answer, Not that I can recall, no. You mean amending a sentence? Question, Changing a charge, changing a fine after the judge set the conviction and fine. Answer, No, unless it would be a circumstance like this, where the judge might have fined somebody and left them there to be committed in lieu of the fine, and then he was unable to get the amount up or something like that; that would be the only thing. Question, Then you reduce the amount so he wouldn't have to be committed? Answer, Yes. Ques- [fol. 323] tion, But you would never change the charge? Answer, No. Question, You would reduce the amount of the fine and Mrs. Naglee, I assume would show that on the complaint? Answer, I would imagine she would. Question, Would you ask her to? Answer, Generally, I mean I did not even bother with it. If the judge made a disposition in the case, most likely, as I said, there was a problem, probably waited around the station and couldn't get up the amount. Question, Do you recall—you go to court quite frequently? Answer, Yes. Question, Do you recall in the years that Mr. Teitelman has been the judge, is ever in open court altering a charge involving an operating offense to a parking offense? Answer, No, I don't ever recall, no. Question, Now again just so I am straight. All of these alterations, so far as you know, were done after having been cleared by you? Answer, yes."

Now, there is another pencil marking here, so I assume that counsel has agreed I stop there.

Mr. Aiken: Well I think those pencil marks, Your Honor, in fairness to Mr. Malandra, represent what I think—

Mr. Malandra: I know nothing about it.

The Court: As long as he keeps thinking the same way, we're making marvelous progress. Take a fast look, Mr. Malandra, and let me know if you want me to stop

there and keep on going. In the middle of 257 we have another pencil mark. Continuing.

"Question, Chief, I have here two envelopes, one is on the police department of Bellmawr, New Jersey stationery, and on the outside is written the name 'Scott.' On the back is [fol. 324] written 'Careless, ten dollars and five dollars, Disorderly, one hundred five dollars. Doctor, twenty dollars. Total One hundred thirty dollars.' At the end, underneath the two hundred twenty-five dollars, 'Less one hundred forty dollars paid, balance eighty-five dollars.' You recognize this envelope? Answer, Yes. Question, This envelope is opened on the end? Answer, Yes. Question, Do you know how this was opened? Answer, I opened it over at the hall just now. Question, In my presence? Answer, Yes. Question, Inside the envelope is an original complaint charging Joseph H. Scott of 2510 East Clearfield Street, Philadelphia, Pennsylvania, with disorderly conduct, together with a copy of the receipt to Joseph Scott, showing the payment of a fine of one hundred five dollars for disorderly conduct, on April 6, 1960, together with eight-five dollars in cash. Is that what was in the envelope when you opened it? Answer, Yes. Question, Who put these items in the envelope? Answer, I gave Mrs. Naglee the envelope, she put it in there. Question, Whose writing is this? Answer, Mrs. Naglee. Question, And the writing on the front? Answer, I put that there. Question, The name Scott was written by you and the figures by Mrs. Naglee? Answer, Yes. Question, Now, when did you give this complaint and money and receipt to Mrs. Naglee and what did you tell her to do with it? Answer, I told her to put it away. I said I told Mr. Scott, but I think that somebody might think that this guy was taken over, I think Stanton is friends with some relation of Scott. Question, You say Stanton, who do you mean? Answer, Thomas Stanton. Question, The councilman here? Answer, Yes. Question, You think what? Answer, I said put it away, because maybe he will come in and demand it some day,

and if it is in there—well, if Mrs. Naglee wasn't there, I'd [fol. 325] have to get her. Question, What does that cash represent? Answer, The guy originally posted I think it was two hundred twenty dollars the night Virtue picked him up. Question, Let's go back to that night. What was he charged with? Answer, Originally he was going to charge him with drunken driving, and then he made it 39:4-97. Question, Did he charge him with drunken driving, did he write up a drunken driving summons? Answer, He had 39:4-50, and then he run the test, if I can recall now— Question, Yes? Answer, And then he changed it to 39:4-97. Question, I see. What happened after that? Answer, Mr. Scott, I think called me on the phone and came down on a Monday morning or something like that, if I am not mistaken. Question, How much time elapsed between the time of the arrest and the time that he came down to see you? Answer, A couple days or a week. Question, What happened when he came to see you? Answer, When he came to see me, he said 'I am sorry, I have been taking some medicine.' He said 'I am quite upset, I have a nervous or heart condition.' He said, 'I know when the officer showed me the balloon and all, it looked like he was trying to take advantage of me.' I said 'Well, did you submit to the examination?' He said, 'Yes, I wanted to prove to him that I wasn't under the influence.' He said, 'I gave him a lot of stormy weather, I admit to it and I am sorry about it.' Question, Then what happened? Answer, Then in the meantime I had heard through the grapevine where we was trying to take advantage of Philadelphia motorists, you know. Question, Yes. Answer, So I mean, I told him, I said, 'Mr. Scott, do you feel that we took advantage of you?' He said 'No, I don't now, that night I was burned up when he said he wanted me to take the test.' And I said, 'Well, didn't it turn out in your favor?' He said 'Yes [fol. 326] it did.' Then I explained to him that we had a guy who we had prior to that and had the same thing, and he died in the hospital, and we suspected him of being drunk, and he was an acute diabetic. Question, Did Mr. Scott

appear in court? Answer, No. Question, When was the decision made that he didn't have to appear in court? Answer, Well, the night he came down there I told him that he could come back for a hearing before the judge, and what the charge would be, disorderly conduct and careless driving. Question, Yes. Answer, Or if he forfeited, it was up to him and I told him what the breakdown would be, you know, in the forfeit, and he said, 'Well, I don't know.' Question, What would the breakdown be in the forfeit, he would lose it all? Answer, I didn't want him to lose it all. I felt after talking to the guy that he was more reasonable than that night. Virtue was burned up and he felt, he was burned up at the guy and I felt that the guy wasn't a bad guy after talking to him. He proved to me he is a sickly man. Question, It was the understanding that he wasn't coming back? Answer, Yes, generally. Question, And at that time, you told him what the total amount of the fines and costs would be? Answer, Yes. Question, Why wasn't he given the balance of the money? Answer, Because of this conversation that we had. Question, Which conversation? Answer, About that we were supposed to be trying to railroad the Pennsylvania motorists, and I asked him did he believe that and he said, 'Well, if the man comes in here with you or your brother-in-law or something and demands this money, why I would just'— It's going on so darn long now, I'd like to be in a position to bring it out or if Mrs. Naglee is here to bring it out. Question, You have lost me, Chief, I am sorry. As I understand it, the defendant came in at a later date, some days after this [fol. 327] charge? Answer, Yes. Question, And you reviewed the matter and because of the circumstances, you felt he shouldn't be fined as heavily as he might be if he were to go to court, is that correct? Answer, That's right. Question, You, at that time, had two hundred twenty-five dollars of his money? Answer, Yes. Question, Which had been posted as his bail? Answer, Yes. Question, Now, you reviewed with him the fact that he could come into the court and defend and take his chances of losing up to two hun-

dred twenty-five dollars or perhaps more? Answer, No, I said it is according to what mood the judge is in. Question, He was risking money if he came to court, losing money? Answer, Yes. Question, Or in the alternative, he could not appear, which he would lose the bail? Answer, Yes. Question, And you indicated that in the instance the total fines would be one hundred forty dollars. Answer, Yes. Question, Leaving a balance of eighty-five dollars? Answer, Yes. Question, Now, did he ask for his eighty-five dollars? Answer, No, it was the understanding that we would hold it. Question, Until when? Answer, Until, in other words, we were supposed to be taking him over for the two hundred some dollars and we would hold it for him until he came back or someone came in and demanded it on his behalf. Question, This is what I am not following. You made it appear you were taking him over? Answer, Yes. Question, Purposely. Answer, Yes. Question, Why? Answer, Because we had heard this talk we were taking advantage of this Philadelphia motorist, but it was supposed to come from him, but he said, 'No, I don't feel that way.' Question, Now, who knew besides you and Mrs. Naglee and the defendant that you had this eighty-five dollars? Answer, Nobody. Question, Well then, how would your keeping it prompt anybody to make a charge that you were [fol. 328] taking him over? Answer, They thought he had paid more. Question, Paid more than what? Answer, The one hundred forty dollars they thought he had paid, he had to pay two hundred some odd dollars. Question, If you make up a receipt for him of one hundred forty-five dollars, or two sets of receipts and give him his change, and you have a copy of the receipt, he has a copy of the receipt, don't you have your proofs? Answer, Yes, I know it is wrong now. Question, It doesn't make any sense whatsoever keeping this money. Answer, I know. Question, The whole story doesn't make sense. Answer, That is the way it was. Question, Was this your idea? Answer, Yes, it was my idea. Question, When was this envelope put in the safe, Chief? Answer, Some time last year, shortly after, within

a week or two after that. Question, Were you to hold this forever? Answer, No. Question, As escrow funds? Answer, No. Question, When was he to get it back, when you had determined that the matter had died down sufficiently that you didn't think anyone would come in and make the charge? Answer, Yes. Question, When do you think you would have made that determination? Answer, Maybe when Mr. Stanton went out of office. Question, You intended to hold this until he went out of office? Answer, Yes. Question, This goes back to March, 1960, that you took this money? Answer, Yes. Question, It's been sitting here over a year, year and a half? Answer, Yes. Question, Were you going to sue Stanton then for making false charges against you? Answer, He hasn't made any. Question, If he had, was that your plans? Answer, No. Question, What would you do? Here is the money, you have been holding it for a year. Answer, Principal involved. Question, When was the last time you talked to Mr. Scott? Answer, I guess whenever he came down there that night, [fol. 329] I can't say when it was, Monday night or something. Question, You say he's a friend of Stanton or Stanton is a friend of his? Answer, Stanton is a friend of his brother. Question, Couldn't you accomplish the same thing by telling him to tell Stanton how well he was treated? Answer, That is the way it was. Question, This was the drunkometer that made the determination he wasn't under the influence? Answer, I think the drunkometer and the doctor. Question, Who was the doctor? Answer, Doctor Cooperman."

Mr. Malandra: Your Honor, I think we should stop there.

The Court: Yes, all right.

Mr. Aiken: I think the only other part remaining, Your Honor, is on 278.

The Court: All right. Stop and go to 278.

"Question, Now, Ed, in relation to this business of posting bail and getting receipts and thereafter having the sum-

mons altered for lesser offenses. Answer, Yes. Question, And recording of a fine less than the bail that was posted, how many times had that been done? Answer, I'd say be four or five times. Question, Now, in those cases other than these two, where the fine monies were left, what happened to the balance of the money? Answer, Well, I don't know if it was less. Wasn't there one in Philadelphia where the amount of the fines were left in the bail, one that was taken care of? Answer, How long ago? Question, About a year. Answer, Scott—I don't recall."

[fol. 330] Mr. Malandra: That is all, I think, Your Honor.

Mr. Aiken: Just the end of page 278.

The Court: Where it says "By Mr. Rigg: Suppose we wait now and we will have to go on further, Ed. Witness excused." We don't need that. I'll write on the bottom that witness excused. Is there any objection to that?

Mr. Aiken: No objection.

Mr. Malandra: No objection.

(Whereupon court is adjourned for the day.)

May 6, 1963.

Camden, New Jersey.

The Court: All right, let the record show that we're now proceeding into the reading of the alleged statement given by Chief Garrity. I am starting at page 2 of the statement.

"(Interrogation commenced at 6:30 p. m., Tuesday, December 4, 1962.)

EDWARD J. GARRITY, Chief of Police, Borough of Bellmawr, County of Camden, State of New Jersey, sworn.

By Mr. Kaplan:

Question, Chief Garrity, of course, the background of this is the idea that in Bellmawr there was a policy or practice of what is commonly known as fixing tickets, which meant altering or changing traffic tickets, and I believe that [fol. 331] you are familiar with the fact that that is something that has been suggested.

Now, I would like to go over these. Before we go on, I explain to you we are working on a Supreme Court order dated last June, directing originally the Attorney General to investigate the municipal court in Bellmawr, and now it has been referred to the prosecutor of Camden County for further investigation, to supply facts that were not obtained by Mr. Rigg in his capacity as Deputy Attorney General, concerning irregularities in the handling of motor vehicle matters.

There are some questions we wanted to ask you and before I do, I want to advise you that anything you say must be voluntary, of your own free will and accord, without any threats, promises or coercion. Anything you say may be used against you or against any person in any subsequent proceeding in the courts of our state. You do have the privilege under our laws to refuse to make any disclosures which you feel may tend to incriminate you. Now, shall we proceed. Answer, Yes. Question, You understand your rights? Answer, Yes. Question, First, I'd like to go into some of these tickets, one by one, and ask you some questions. It may be that you will want to look at these tickets, Chief, and I have here a ticket issued out of the municipal court of the Borough of Bellmawr, in the nature of a complaint, number 5453, and in the future as I go through these tickets, I will not indicate that they are from the municipal court of the Borough of Bellmawr, we will assume they are, and issued out of that court and directed to the persons whose names I will mention and for the

charge I will mention. The questioning will involve apparent changes and the reasons why they were made and [fol. 332] by whom they were made and under whose direction, and that will be the general tone of this inquiry tonight."

Is this one of the tickets?

Mr. Aiken: No it is not, Your Honor. Your Honor, there is some questions that start at the bottom of page 4, specifically question "Are you in a position to say that by reason of this so called policy or practice that only one person made these changes?" These questions run over to a little below the middle of page 6.

The Court: Stop, and go to bottom of page 4.

"Question, Are you in a position to say that by reason of this so called policy or practice that only one person made these changes? Answer, Yes, one person made them, one person made the changes and that came about by reason of a direction probably by you as Chief of Police in charge of the police? Answer, Yes. Question, In which the rule was laid down that no ticket would be altered without your direction and without your authority, is that so? Answer, Yes, it works that way. Question, That is substantially or absolutely correct. Answer, Yes, that is right. Question, And the person who made these changes was who? Answer, Mrs. Naglee."

Mr. Malandra: If Your Honor please, I must make that objection in mentioning of Mrs. Naglee in as much as this statement was taken after the alleged conspiracy.

The Court: No, definitely it is not binding upon Mrs. Naglee, Prosecutor. I think we can agree on that.

Mr. Aiken: Yes.

[fol. 333] The Court: I think that we'll take that out. It will save a lot of foolishnes of charging and re-charging because every time it would be mentioned I would feel inclined to direct the jury that it is only binding upon the person who made it and not upon the person whose name is mentioned.

"Question, So that in each of these cases which I will show you that practice was followed as far as you know? Answer, As far as I know, yes. Question, These officers who made these original complaints on which summonses issued, were they required to be interviewed and their consent obtained before you directed Mrs. Naglee to make the charge, provided you agreed the change be made? Answer, Yes. Question, That was the general procedure? Answer, There was none with objection on their part. Question, In other words, if an officer objected, you would not change it? Answer, Yes. Question, Everybody had to be in accord and Mrs. Naglee would not take direction from anybody except you? Answer, Yes."

Mr. Malandra: If Your Honor pleases, I must object to those three or four questions ahead where he says that it was general procedure, and they were talking about a lot of other people here.

The Court: All right, out.

Mr. Malandra: Start after that was the general procedure.

Mr. Aiken: Page 131, Your Honor.

The Court: All right we stop here and go to page 131.

[fol. 334] Mr. Malandra: No objections.

The Court: All right. Continuing.

"All right. Next is summons number 5291, dated November 29, 1959, and the defendant, Phyllis M. Zippel, are you familiar with that one? Answer, I don't know, she is a housewife or something. Question, You don't remember that one. Somehow I get the impression she may have been a nurse, however I don't know. Housewife is correct, that is correct, one hundred twenty-five pounds, female, and she is charged, had been charged originally with driving while under the influence of intoxicating liquor. Answer, Was she examined? Question, Yes, she was. She was charged originally with driving while under the influence of intoxicating beverages, and that was changed to Section 97. Answer, I never spoke to her, Prosecutor, I

don't recall the case. Question, Well, would you know who paid here? This was changed to careless driving. Can you tell by the writing on there who might have made the change? Answer, I would say the officer. Question, Now, in the last case you said the officer and in this case you said the officer, which officer is that?"

Mr. Malandra: I object to that portion of the statement.

The Court: What portion?

Mr. Malandra: Where he mentioned officer and the other defendant.

The Court: Well, give me the writing on the page. What is the direct quote?

[fol. 335] Mr. Malandra: I would say starting with the question, "Well, would you know who paid here? This was changed to careless driving. Can you tell by the writing on there who might have made the change?"

The Court: Strike that.

Mr. Malandra: I think you can start at the bottom of page 132.

The Court: Starting at the bottom of the page, 132.

"Question, You know who paid the doctor? Answer, No, I don't. Question, Is there any possibility that these things were done behind your back where you didn't know of the changes, is that what you're suggesting? Answer, No, I am not suggesting. Question, It could've happened, I suppose. Answer, Could have happened, but I am not suggesting that, I am not passing the buck. Question, Well, there is no sense in being a hero about these things. Answer, I am no hero, but what I can't remember— Question, This was not brought to your attention as far as you remember, and you have a pretty good memory? Answer, It was brought to my attention, I don't know, whether she was separated from her husband, whether she was having troubles at home, I don't know whether she was trying to keep children, I mean I am trying to think what it was. Question, She lived around Fairview, 689 Morgan Avenue, that wouldn't mean anything to you? Answer, No. What

does it say for occupation on there? Question, Housewife. Going north on Kings highway. Answer, I don't know whether she was working, I am not sure. Question, You have no clear recollection? Answer, Not a clear recollection? Question, Do you have a dim recollection? Answer, [fol. 336] Not even a dim one, no. Question, In other words, something could've happened that you don't know about it? Answer, I know about it, you mean it was done without my knowledge or something? Question, Yes. Answer, No, I wouldn't say that. Question, Was this done with your knowledge? Answer, I know that it was done, but I don't know just how. Question, You know the change was made? Answer, Yes. Question, But the responsibility as having authorized it to be made? Answer, Yes, I will accept the responsibility. Question, Are you doing that to protect the officer? Answer, No, I am no hero, but I mean I am truthful. Question, You don't know the nature of the doctor's report? Answer, No, I don't. I mean I could probably talk it over with the officer and probably refresh my mind. Question, Now, why would it be in these last two cases that no disorderly conduct charges were made against these people, even though the drunken charges were sort of withdrawn and abandoned and the charge reduced to careless driving and so on, when you had instructions to Mrs. Naglee to catch these things. Answer, No, I didn't have instructions. Question, I gathered earlier that every time one of these was down-graded from drunken driving to something lesser— Answer, I think it would depend on the circumstances of the person. Question, Well, you talked about a soldier, 'I waited for him to get one hundred dollars' he didn't have any pity on him even though he was a soldier. Now, this Zippel woman, you let her go, and I forget the name of the last party we talked about, you did the same thing. In other words—"

Mr. Malandra: I think that should be stricken, Your Honor.

[fol. 337] The Court: All right. Start with when you talked about a soldier. Stop.

Mr. Aiken: We stop now and go to 146, Your Honor.
The Court: All right. Page 146. Continuing.

"Question, All right, now we go to summons 5311 dated January 10, 1960, the accused being William R. Snyder, the offense happening at 2:20 a. m., the defendant being a resident of Camden, a deck hand, originally charged with drunken driving and, apparently, the charge was changed to Section 97, which is reckless driving. The matter is shown to have been disposed of on the back up by Judge Teitelman on January 20, 1960, which is ten days after the date of the summons and complaint on a plea of guilty and he was fined ten dollars and costs of five dollars, and Judge Teitelman signed it. That is I believe what you said was Judge Teitelman's signature? Answer, Yes. Question, Were you present in court? Answer, I can't recall. Question, Did this man appear in court? Answer, Well, the Judge—I don't know. Question, And Mrs. Naglee has acknowledged receipt of the five and ten on a charge of careless driving? Answer, Yes. Question, Was this man out on bail? Answer, Prosecutor, I can't recall. Question, I'm going to ask the question, I am going to ask you to look at this summons and look at the alteration and I ask you whether or not you can tell me who made that? Answer, No, not positively, I couldn't. I'd only be guessing if I told you. Question, Do you remember the case? Answer, No. Question, Anybody approach you on that case? Answer, No, I can't recall. I mean I can't recall any incident. Question, If you tell me, I believe you? Answer, I think the judge, yes. Question, Who made the change, you don't [fol. 338] know? Question, The officer? Answer, It could be the officer or it could be Mrs. Naglee, I couldn't be sure if I tell you. Question, You know nothing about the doctor's report in this case? Answer, No, I don't. Question, You don't know whether he was examined for drunken driving? Answer, No."

Mr. Malandra: If Your Honor please.
The Court: No, I think that's proper. As far as he is concerned, in that thing there, he is saying he said does

not know whether it was Naglee that did it or not. I think that is all right. Continuing.

"Question, There are no records that you have that would refresh your memory if we asked you to look the thing up? Answer, No."

The Court: Middle of 149, I think then.

"Question, And nobody ever spoke to you about this case? Answer, I can't recall it, no. Question, Of course, I am not suggesting anything to you, but doesn't that change resemble Mrs. Naglee's way of changing, although she has a better handwriting on the receipt, on the change it is rather crudely. Answer, Yes, but the judge made the change. Question, That may be, but when he heard the case it was 39:4-97, it wasn't drunken driving. Answer, You see it was altered. Question, Yes. Answer, And I am sure the judge looking at it sees it was altered. Question, That may not be, maybe he wasn't looking for trouble. Answer, I don't recall that case. Question, You don't recall anything about that case? Answer, No. Question, Do you remember him being charged with disorderly conduct? Answer, No, I don't offhand. Question, Well, he [fol. 339] was, and he plead guilty and he was fined a substantial amount, plus costs. Answer, In court? Question, Yes. Well, I don't know whether he appeared or not. Answer, He appeared before the judge there. Question, He appeared here on a careless driving charge and he may have forfeited the other, I don't know, it is possible. Answer, The other complaint would be backed up, you could tell if it was Mrs. Naglee's handwriting. Question, We will get into that. I mean it does establish a pattern, as you said you admit it was a pattern that you were charge and disorderly conduct and got the money? Answer, Yes. Question, All right. Next is number 5366, dated February 7, 1960, 2:40 a. m., Herbert W. Brining, Audubon Park, New Jersey, Truck Driver, charged with drunken driving, and in the 'other violations' area, the bracket, it appears as though there is an over-write over that, it appears as

though the '50' that there is an over-write '97', he was charged under the section and not by words, 39:4-50, but that was changed to 39:4-97, and the officer being Virtue. Answer, Yes. Question, And I ask you to examine this complaint and tell me whether or not you know who made that change. Answer, Well, I don't know. It looks like the officer, and yet it could be Mrs. Naglee's. Question, It resembles the last three or four that were made in Virtue's cases, in his cases the handwriting seems to be the same Answer, Yes."

Mr. Malandra: I object to that part, that question and answer.

The Court: All right, stop. Stop and go to page 152.

[fol. 340] "Question, And you know nothing about it? Answer, I didn't say that. Question, You know anything about this case? Answer, He is a truck driver? Question, Yes. Answer, The only thing I know, I think he was going to lose his job, I think he has five or seven children. Question, Did you see the doctor's report? Answer, I don't recall whether I did, truthfully, was there a doctor's report? Question, Yes. Answer, No, I don't recall whether I did or not. Question, Weren't you interested in the doctor's report—did you sanction this change? Answer, When I heard of the case, yes. Question, Was that before it was changed, or after it was changed? Answer, I don't recall, but I went along with it because I think he has five children or seven, I don't know which. Question, You didn't investigate the merits of the charge against him then, whether the doctor had said he was drunk or sober or anything of that sort? Answer, Truthfully? Question, Yes. Answer, No, I investigated the merits of the family. Question, What you thought were the merits of the case? Answer, Not the merits of the case, Prosecutor, the merits of his home. Question, Well, how did you find about this charge, did Virtue talk to you about changing it? Answer, He talked to me and explained, I guess the guy came back and told him the circumstances. Question, And this change was

cleared through the violations bureau? Answer, Yes. Question, And not through the court action? Answer, Yes, that's right. Question, And he was found guilty of careless driving? Answer, Yes. Question, And fined ten dollars and five dollars costs? Answer, Yes. Question, Without court action? Answer, That's right. Question, Even though the original charge had been drunken driving? Answer, Yes. Question, Was there any bail in this case at all? Answer, I don't think so, I don't think he had any money, I don't [fol. 341] recall if he was out of work at the time it happened or not. Question, Well, he wasn't a youngster. Answer, No, I know he had five or seven children."

Mr. Aiken: We can go to page 172. This is Linwood Finney.

The Court: All right. Page 172, continuing.

"Question, This one is number 5537, dated May 28th, 1960, it happened at 1:55, I can't tell whether it's a. m. or p. m., Linwood Finney, 46 Walnut Street, Pennsgrove, New Jersey, truck driver, charged originally with driving while under the influence of intoxicating liquors. You could see '50' under '97', the '97' being an overwrite, which changes the nature of the offense as charged from drunken driving to careless driving. And the back up shows that this was settled through the violations bureau as a careless driving charge. Answer, I think he was a colored truck driver, wasn't he? Question, Let's see. I don't think you show that on these things. Answer, Yes, I think so. Question, It does? Answer, I believe so. Question, Let's see, there is sex, Male, height, occupation, nothing to denote colored. Answer, I think he was a colored truck driver. Was he a truck driver? Question, Yes, Pennsgrove. And settled through the violations bureau for ten dollars, fine and five dollars costs, and that sum was received by Mrs. Naglee according to a receipt issued by her as of 6-20-60, which is quite a few weeks, several weeks after May 28, when he was charged with this thing. Was he charged with disorderly conduct, do you know? Answer, Yes. Question, Did he enter a plea

of guilty? Answer, Same as the others. Question, Handled the same way, he did not appear in court? Answer, Yes. [fol. 342] Question, Brought the money to Mrs. Naglee? Answer, Yes. Question, Is that what happened in each case? Answer, Yes. Question, She got the money, parceled it out? Answer, Well— Question, Paid the doctor? Answer, She didn't get all the money all of the time, because if it was, say, at night time or something, it was deposited with whoever the clerk was on the desk. Question, He turned it over to her the next morning? Answer, Yes. Question, Eventually she is the one that got it? Answer, Yes. Question, And she made the distribution, put the five dollars one place and the other money another place? Answer, Yes. Question, What was the doctor's report in this case? Answer, I think this was a border-line. Question, This was a border-line case? Answer, Yes. Question, And this was changed by whom? We are getting into Virtue again. Look at the '97'. Answer, I can't be sure. Question, Well, I don't want to put words in your mouth. Did you know that the change was made or was to be made? Answer, Yes."

Mr. Malandra: Your Honor, I think the portion there that question, "And this was changed by whom? We are getting into Virtue again. Look at the '97'", there until the end of the testimony, I think should be stricken.

The Court: All right.

Mr. Aiken: Well, I think the last question and answer is pertinent, "Question, And you authorized it and directed the change? Answer, Yes."

Mr. Malandra: I have no objection to that.

[fol. 343] The Court: I'm going to leave that other question in and we'll finish up with, "Question, This was a border-line case? Answer, Yes."

Now, which one were you talking about, the second question down?

Mr. Aiken: I think that it is pertinent. "Question, Did you know that the change was made or was to be made? Answer, Yes."

The Court: Continuing.

"Question, Well, I don't want to put words in your mouth. Did you know that the change was made or was to be made. The answer was yes."

Mr. Aiken: I think the first question and answer should come up on the top of page 175, but the second question and answer should stay in.

The Court: I think that's right. I think the whole thing ought to stay in because one of the situations here about this, that and the other, is that they say that a lot of this on their part was trying to help people.

Mr. Malandra: I have no objection if it all stays in.

The Court: I will permit it to stay in because part and parcel of his defense is as I see it is lack of criminal intent and a lot of these matters that are appearing in here have a tendency, at least to show a lack.

"Question, He came to you and got your— Answer, He came to me and explained the guy's circumstances. [fol. 344] Question, And you authorized it and directed the change? Answer, Yes. Question, Next is summons 5611, dated June 2, 1960, either 1:45 a. m. or p. m., John Gregal, Salem Pike, Clarksboro, New Jersey, a welder, and charged originally, you could see the '50' with the section dealing with drunken driving, which was changed to '97', which was superimposed on the '50', and it obliterates it to some extent. The complaint was made by Officer Virtue and the matter was disposed of through the violations bureau by a payment of ten dollar fine and five dollars in costs on June 21st, 1960, and the receipt was given by Mrs. Naglee for that amount on a charge of careless driving. Now, look at the summons, if you will, Chief, let me know who made that change. Answer, Mrs. Naglee. Question, Mrs. Naglee? Answer, Yes, because it's got it written there. Question, You could tell her writing, did she change the section number? Answer, Yes, I would say so. The number is confusing sometime, when they see the writing. Question, Too fast for conditions, that was the careless driving part? Answer, Yes. Question, Did you know the change was made or was to be made? Answer, Yes. Ques-

tion, Done with your permission? Answer, Was he examined by a doctor? Question, I will ask you that question. Answer, I don't recall, I am trying to think, John Gregal, he was examined on the same afternoon. Who paid the doctor in this case? Answer, Same way. Question, The same way. Was there a disorderly case involved? Answer, Yes. Question, There was a disorderly conduct charge? Answer, The Borough truck stopped and he bumped into it, and they got into an argument. Question, The money was deposited and the fine in this case was how much, fifty dollar fine and five dollars? Answer, Yes. Question, Of course, ten and five on the careless driving [fol. 345] charge, and the doctor was paid out of that money? Answer, Yes. Question, In cash. Did the doctor have to come down to get his money or did you take it down to him? Answer, No, he always came down to the station. Question, You never went to him? Answer, No. Question, You wouldn't do that? Answer, No, he came in on other cases. Question, And at that time, you took care of him? Answer, Yes. Question, No question in your mind about that? Answer, No. Question, Were you there when he was paid at any time? Answer, It was always on hearing night. Question, And you are there and you talked to him and he gets paid, and so forth? Answer, Yes."

Mr. Malandra: May I go back to 175. "Now, look at this summons, if you will, Chief, let me know who made that change?" He said Mrs. Naglee. I asked that that be stricken.

The Court: All right, take out this part here. "Now, look at this summons," that is correct?

Mr. Malandra: Yes sir.

The Court: And, where are you going now?

Mr. Aiken: Well, probably up to the second question on page 176.

The Court: Top of page 176, "Question, Did you know the change was made or was to be made?"

Mr. Malandra: No objection.

[fol. 346] The Court: All right, supposing we take out starting with, "Did you know the change was made or was to be made."

Mr. Malandra: I think 180 is the next page.

The Court: All right. Continuing.

"Question, Next is summons 5759, dated November 9, 1960, 2:30 p. m., Robert A. Franklin, Barrington, New Jersey, Machinist, I think. Apparently charged with driving while under the influence of liquor, which was changed to '97' over '50', which, of course, makes careless driving, with a further notation, 'Driving in and out of traffic over line', and this matter was disposed of, according to the summons, it may not have been disposed of this way, but the summons indicates it was disposed of November 26, upon a plea of guilty and the amount of the fine was ten dollars and costs five dollars, and the receipt signed by Mrs. Naglee for fifteen dollars indicated that the charge was careless driving. Answer, He had come down from the navy yard. He had his tooth extracted. I run a drunkometer on him, he wasn't examined by a doctor, I don't think. Question, Yes he was. Answer, Was he? Question, Yes, he was. Answer, Franklin? Question Franklin, he was R.A. Franklin. Yes, he was on November 9th. Answer, I don't recall the doctor examining him. Question, The doctor got paid twenty dollars for nothing? Who made the change, are you familiar with this? Answer, Yes, I am. Question, You are familiar with this? Answer, Yes, as I started to tell you, this fellow came from the navy yard, he had a tooth pulled, they had given him some stuff and I called the naval base to verify that he had just had the tooth pulled and the doctor had given him this shot of stuff and [fol. 347] told him not to drive. Question, Not to drive? Answer, Yes, and he drove. Question, Was it narcotic? Answer, Some type of narcotic, yes, I spoke to the doctor over there. Question, What did the doctor's report indicate in this case, do you remember? He was examined, you don't remember that? Answer, I didn't remember him being examined by the doctor, because I run a drunkometer

on him and we got less than 10 hundreds of one per cent. Question, Do you have the records of your drunkometer test? Answer, No, they would be attached to the report. Question, They will be? Answer, Yes. Question, Why wouldn't they be? Answer, I said we don't have them. I am just trying to recall the case. Question, Did we discuss as to who made the change? Answer, The change was made right after noon. Question, By whom? Answer, Well, it was either by Virtue or Mrs. Naglee, either one. Question, You knew about it? Answer, Yes, I knew about it. Question, You authorized or instructed or you went along with the deal? Answer, I was right there, because I am the one that called the hospital. Question, It was your idea? Answer, I called the hospital. Question, You instructed the change be made? Answer, Yes. Question, You don't recall whether it was—"

Strike that and stop there. Suppose we strike out, "You instructed the change be made." Then I'll run a line through the next question and actually line it out. Then we'll go over to, "But when we run a drunkometer on him," I think that's fair enough.

Mr. Aiken: All right.

The Court: Because you want the business of running a drunkometer test, Mr. Malandra. Still answering,

[fol. 348] "When we run a drunkometer on him, I am trying to think, he was eight or the one hundreds, that is what made us call the doctor over there. The doctor said, I forget the narcotic drugs that they had given him and he told him he shouldn't drive a vehicle. Question, Now, Robert Franklin in this case, must have been in some kind of a collision? Answer, Yes." Strike the next part out. We'll run a line through Question, "He had one hundred twenty-three dollars, fifty-five cents," whatever it is.

"Question, Now, was he charged with disorderly conduct? Answer, That is why I didn't think he had a doctor, because he didn't want to blow the balloon up. Question, Was he charged with disorderly conduct? Answer, Yes, he gave us a lot of trouble in the station. Question, What way?

Answer, Not wanting to blow the balloon up and saying we were trying to frame him, and being drunk and all that stuff, and call up the hospital. Question, Eventually he pleaded guilty to a disorderly conduct charge and fined one hundred dollars and five dollars costs? Answer, He admitted the next day he was nasty to us in his talk. Question, And also paid fifteen dollars for careless? Answer, Yes. Question, And this fellow is apparently the same pattern, where people have been charged with drunken driving, they will be changed if they plead guilty to a careless driving charge and disorderly conduct? Answer, Is this fellow charged the same way? Question, Well, if they are charged with drunken driving and then it is dissolved into two charges, careless driving, and they are charged with disorderly. Answer, Do you mean if we ask them if they want it that way? Question, You told me you had an arrangement with Mrs. Naglee where these drunken driving cases were changed for reasons best known to yourself." That's out.

[fol. 349] "Question, Regardless of the condition, there was a follow-up, not only as a charge of careless driving, but also a disorderly conduct charge? Answer, Yes, if it warrants. Question, You didn't think this man was drunk? Answer, When I did the drunkometer. Question, Yet you followed the same procedure? Answer, He gave us a lot of trouble. Question, This was the disorderly part, this case was a little different? Answer, He was a little belligerent at the station. Question, I guess drunks are a little belligerent, aren't they?"

Mr. Malandra: I ask that be stricken.

Mr. Aiken: I don't have any objection for striking that question and that answer.

The Court: All right, we'll just strike that out.

Mr. Aiken: Now, it goes to page 186, Robert Killian.

The Court: All right, we'll continue. Page 186.

"Question, Now, this is number 5157, dated October 4, 1959, and the defendant is Robert T. Killian, 2639 Emerald

Street, Philadelphia, truck driver, and apparently was charged with drunken driving by reference to the statute section, and that which was changed to 85. This was disposed of according to the memorandum on the back of this under court action on November 14, 1959, by a plea of guilty, where he was fined five dollars and five dollars costs, signed S. Teitelman. Is that the judge's signature? Answer, No. Question, Mrs. Naglee's? Answer, Yes. Question, And Mrs. Naglee has signed a receipt for the five and five and under a charge of 'passing cars on shoulder', [fol. 350] and I ask you whether you know who made that change? Answer, Well I don't know, either Mrs. Naglee or the officer."

Mr. Malandra: In view of that question, I have got to object to the top part of the page, also.

The Court: All right, the portion just read will be stricken. Supposing we take it from the top to page 187 down to the question "Now, was he charged with disorderly conduct". I think that is fair.

Mr. Malandra: That's right, sir.

Mr. Aiken: Well, is the answer "No" staying in, at the top of 187.

The Court: Yes, that should stay in.

"Question, Now, was he charged with disorderly conduct? He was. And there was a hearing on 10-14-59, which is the same day which it appears on 'Court Action'. Answer, I don't know too much about that case, Prosecutor, I can't recall. Question, And fined fifty dollars and five dollars in costs? Answer, Yes. Question, Would you know whether there was a court appearance in this case? Answer, I don't believe so. Question, In other words, this is some indication— Answer, I can't give you much detail on that case. When was that? Question, October 4, 1959. This goes back. Answer, Yes. Question, This doesn't ring too much of a bell? Answer, No. Question, Well now, in this case, bail was put up for this defendant who was a resident of Philadelphia in the amount of two hundred fifty

dollars, and who was James Lee. Answer, He is a dis-[fol. 351] patcher. Question, Police officer and, of course, authorized to accept bail? Answer, Yes. Question, And the bail is furnished by A. Del Rossi, a Mr. Del Rossi and for Bob Killian on driving under influence, I suppose it is, two hundred fifty dollars for his appearance. What happened to that bail money do you know? Answer, No, I don't know off-hand. I can't even recall the case good, as I told you that one. Question, He was going west on Browning Road. It doesn't say too much. Now, your department retains all the receipts for this two hundred fifty dollars? Answer, Yes. Question, Are there four copies or three copies? Answer, Three. Question, We still have the three? Answer, Yes. Question, Which indicates that Del Rossi never got a copy? Answer, Well, he had to get a copy, but if Del Rossi come back—is there anything marked on those other than that? Question, No. Answer, I truthfully don't remember that, I don't remember that case here. Question, Do you maintain a bail book? Answer, Let me see it? Question, Do you retain a bail book of any kind where you record cash bail items or anything like that? Answer, I think Mrs. Naglee does. This must have been given out and came back. That is how we got the white copy back. Question, Indicating what? Answer, Indicating that this Del Rossi, I guess, got the money back or something. But I truthfully can't explain it right now. I mean to get this back and they are stapled together, because they were torn off—in other words— Question, That doesn't always follow. Answer, Prosecutor, this one has been folded and the rest of these you could see are plain. This one has come back off Del Rossi. Question, Or something, but it doesn't dispose completely of the question. You have no other record, no other receipts, given or taken? Answer, Maybe Mrs. Naglee could enlighten you, [fol. 352] I don't know, but that white receipt was out, because it's been folded separate than the other ones. Question, I asked you whether you had authorized that change and you did say yes, or didn't you, I forget? Answer, Well,

I said this one didn't ring a bell with me. Question, You have no idea who made this change? Answer, I am sure I didn't object to it, I mean it doesn't stand out. Question, Can you identify the handwriting?"

All right, strike that then. Question, can you identify the handwriting and the answer are out.

Mr. Aiken: That's all in this book.

The Court: All right.

Now, gentlemen, I will proceed to start with the reading of the alleged statement of Edward Virtue.

"Edward Virtue sworn, By Mr. Kaplan: Question, Now, before we begin, I want to advise you anything you say must be voluntary, of your own free will and accord without any threats, promises or coercion, and anything you say may be used against you or against any person in any subsequent proceeding in the courts of our state. You do have the privilege under our law to refuse to make any disclosures which you feel may tend to incriminate you. You understand that? Answer, Yes. Question, You further understand this investigation was first undertaken by the Attorney General by Budd Rigg and by direction of the Supreme Court, it has been handed to us to possibly fill in some gaps and that is why we are here and I think the best we can do is proceed with these tickets. As background information, I will read what your testimony was earlier. I don't think there is any sense in doing this in question and answer form. At one point you [fol. 353] were discussing with Mr. Rigg the practice of altering the summonses in Bellmawr and you answered you were aware of the alterations and Mr. Rigg asked you whether or not he was correct in his assumption you participated in this practice of altering tickets and you answered that he was. He understood there was an apparent practice, policy or proceeding which had grown up or had been set up in Bellmawr Police Department whereby no alterations should occur without the approval of the chief, and you answered you always went to the chief and the questions then went way up to a point, and your own tickets

you had taken care of yourself and you had no recollection of taking care of other tickets of other officers. Answer, That's correct. Question, Now I'm going to show you some complaints of it and so on and ask you specifically as you look at these tickets whether or not the alterations appearing to be made on them, were made by you. I have 5532,—when I say ticket I mean complaint—"

Well, I think now we go—

Mr. Malandra: Well, Your Honor, I also would like to make an objection to the second question starting on page two. It says you further understand this investigation and so forth, taken directly and handed down to possibly fill in the gaps and that is why we are here, and then I object to starting with I think the best we can do is to proceed with these tickets and background information. I believe I will read what your testimony is earlier. I think that should also be stricken out of there.

The Court: All right, we'll stop it there. That is why we are here. We'll stop at that place.

[fol. 354] Mr. Malandra: That goes all the way down to the next question on page 3.

The Court: Yes, because I think the way we will read the statements is to put in Deputy Attorney General's statements first and then follow it up with the statement taken by Mr. Kaplan, and I will merely make that a suggestion, that first Budd Rigg and then next Kaplan on each of them individually. There will be at least some type of understanding. If we start jumping all over the lot, nobody's going to understand anything. So, if this is in the statement taken by Mr. Rigg, it isn't necessary to rehearse or rehash anything there. It's in the nature of an introductory statement anyway, so I think if we strike it out, it'll do no harm to anyone. Stop and go to middle of 3, is that right?

Mr. Malandra: As I understand it, Your Honor is starting on page 2, the second question when it gets down to the middle of the page, where the Supreme Court has been handed down to us to possibly fill in some gaps, that is why we are here. Is that where we will stop and then the answer on page 3?

The Court: Yes, that's right.

Now, I have one on 36 here, about one-third the page down.

"Question, Number 5291, November the 29th, 1959, 3 a. m., Phyllis M. Zippel, housewife, the word 'operate', which is printed as part of the ticket is circled, charge originally was 39:4-50, your drunken driving statute, and that has been erased and changed to, and when I say 'that you know', I mean '50' has been erased and inserted is [fol. 355] 97, which is the careless driving violation. And the matter was disposed of in the violations bureau on a careless driving charge and a conviction and a fine of ten dollars and costs of five dollars, and I ask you whether or not you made that erasure and that new insertion. Answer, That is not my handwriting. That is not my handwriting. Question, Are you familiar with the case? Answer, Yes sir. Question, Do you know whether or not Mrs. Zippel was examined for drunken driving? I'll tell you she was. Do you remember the nature of the report made? Answer, I believe she was found to be under the influence. Question, Found what? Answer, Found to be under the influence if she was examined. Question, The doctor pronounced her unfit to drive, in other words? Answer, Yes. Question, And were you asked if you would consent to this change, do you remember? Answer, I believe it was a hardship case. Question, I would like to get this clear. Do you recall being asked to make the change and give your consent? Answer, I'd had to be consulted, yes. Question, Do you remember who asked you? Answer, No, I do not. Question, Now, the receipt shows a conviction on a careless driving charge, and you give your consent because it was a hardship case? Answer, Yes, I believe it was. Question, And this is in line with the policy or practice that developed with tickets other than drunken driving, you did whatever you could to bring them into reasonable balance according to your judgment? Answer, Yes, may I see that summons, sir? Question, What was this change made the same night she was arrested? Answer, I couldn't answer

that. Question, Do you remember any details about the case? Answer, No."

Mr. Aiken: Page 43, Your Honor.

[fol. 356] The Court: "Question, Now, number 5157, October the 4th, 1959, 7:25 p. m., Robert T. Killian, a Philadelphia truck driver charged with drunken driving under section 50, originally and that is over-written with '85' passing car on shoulder, disposed of by court action on 10-14-59, although originally returnable according to the complaint on October 21st, 1959, a week earlier through court action, and there is a signature, S. Teitelman, disposition by a plea of guilty, a fine of five dollars, costs of five dollars, and I ask you whether or not the alteration or change which is shown on the front of that complaint is in your handwriting? Answer, No sir. Question, Is that Judge Teitelman's handwriting, do you know? Answer, No sir. Question, It's not his writing? Answer, No. Question, Now, do you recall a disorderly conduct charge against Robert Killian as of the same date on which you are the complainant, and he plead guilty on the 14th, which is the same day he plead guilty to passing car on shoulder, and he was fined fifty dollars and costs of five dollars. Do you remember that? Answer, No sir, was that in 1959? Question, 1959. Answer, No. Question, Are you familiar with the fact that bail, cash bail, was put up for Killian on this same night that he was arrested by one Del Rossi for his appearance on October 21st do you remember the bail being put up? Answer, No sir. Once we make the arrest and make the charge, we leave them in the station, and if they don't make bail, we commit them to the county jail. Question, You don't know anything about the bail being placed? Answer, No sir. Question, Who is Del Rossi, do you know? Answer, Del Rossi? Question, When you arrest one of these drunken drivers, do you stay with him until he is disposed of by bail? Answer, We have him examined, make our charges, and we will leave him in charge with the [fol. 357] man on the desk and we go about our business. Question, You don't stay with him? Answer, No sir, some-

times we do and sometimes we do not. Question, Do you remember being with him when the bail was furnished that night? Answer, No sir. Question, Do you recall examining the doctor's report in this case as to the drunkenness? Answer, No sir. Question, But you did consent to that change? Answer, Yes sir. Question, To whom, do you remember? Answer, No sir. Question, Now this disorderly conduct charge, do you recall why you placed a disorderly conduct charge against him? Answer, No sir. Question, Did you testify against him at a hearing for disorderly conduct, if there was a court action on it? Answer, Yes sir. Question, Do you recall testifying against him, he was a truck driver? Answer, Evidently, that's why I consented to the change. That would've meant his livelihood. Question, In other words, you consented to a downgrade so to speak of the drunken driving complaint to disorderly conduct charge and careless driving? Answer, Yes sir, it's possible the man was disorderly with me. Question, But you don't remember? Answer, No sir, I do not. Question, Was it the unusual occurrence or not uncommon if you felt it was a hardship case, you would dispose of it by consenting to a downgrade so the charges became not drunken driving, but careless driving and disorderly conduct? Answer, Where a person was disorderly with me, yes. Question, But not where he wasn't disorderly? Answer, No sir. Question, You're sure of that? Answer, I would say no sir. Question, Do you remember signing the complaint in this case? Answer, I signed my complaints, I'll say that. Question, Do you think someone might have signed your name to these complaints? Answer, I don't think so. Question, And you insist that anytime you downgraded a drunken [fol. 358] driving case, there was a legitimate reason for calling the person disorderly, even though he was a quiet drunk and just driving in a zig-zag fashion? Answer, I very seldom saw a man locked up for drunken driving that was very quiet. Especially when brought in for examination. Question, Let's say someone's conduct did not reach the point of being disorderly? Answer, I can't say I can

remember the case, no sir. Question, 5759, November 9, 1960, 2:30 p. m., Robert A. Franklin, charged originally with drunken driving, changed to careless driving with almost the entire part of the original charge obliterated and written over the careless driving section of the statute 'Driving in and out of traffic over the line'. You made the complaint, disposed of by what is termed 'Court Action' November 16th, 1960, although the matter wasn't actually returnable until November 30th, 1960, by a plea of guilty and a ten dollar fine and five dollars costs, signed 'S. Teitelman' although there is some question as to whether or not the judge did sign this. And, it shows a conviction for careless driving at a receipt of ten dollars and five dollars by Mrs. Naglee and I ask you whether or not you made that alteration or change on that ticket? Answer, I know of the case, but I didn't change it. Question, Tell us what you know about it. Answer, Mr. Franklin was involved in an accident, I brought Mr. Franklin to headquarters and charged him with drunken driving. Question, Was he drunk? Answer, He appeared to be drunk, yes. Question, What did the report show when it came in? Answer, I believe the report also said he appeared to be under the influence of intoxicating liquor. Wait a minute— Question, Does this explanation have to do with the fact he wasn't drunk? Answer, He was a drunkometer test if my recollection serves me. They have the report there. Question, [fol. 359] I didn't ask you that. Answer, I'm trying to answer it best I can, but I had so many cases. Question, I'm not pushing you. You thought he was drunk? Answer, I believe Mr. Franklin was brought in and I believed him to be under the influence. Question, And you made a complaint? Answer, I made a complaint and put him on the drunkometer. Question, Yes? Answer, I believed he had a reading of eight hundreds or nine hundreds of one per cent of blood alcohol. Mr. Franklin was a retired naval officer, and we told him he was under the influence, he became abusive and said he wasn't drunk. We checked out the navy yard, he stated he had just come down from the navy yard and he just had a tooth pulled and had

stopped and had a couple. Question, A couple of drinks? Answer, Yes, and I called the navy yard and talked to the surgeon who worked on him, and he stated he had a tooth pulled at the time and he had a lot of stitches and he gave him some kind of pills or some kind of medicine and he told him not to touch any alcohol. Question, Did he take the pills? Answer, Yes, I believe he took some right there. Question, Do you know that? Answer, Yes, he gave him some right there before he left to kill the pain. Question, Who did? Answer, The Doctor. Question, Doctor Cooperman? Answer, No, I examined him. I am a drunkometer operator. Question, Did the doctor give him those pills in your presence? Answer, No, I called the doctor the following day and he stated he had given him the pills, yes sir. Question, So you changed the charge? Answer, Yes sir. Question, No other consideration was involved except he had taken pills and that might have changed his condition? Answer, Yes, the alcohol didn't show enough to bring him under. Question, What happened to him? Answer, A friend took him home. Question, what hap-
[fol. 360] pened to his car? Answer, Left at the police station, no, it was towed in because it was involved in an accident. Question, Did you sign a disorderly conduct charge against this man? Answer, Yes. Question, At whose request? Answer, Mine. Question, Just yours? Answer, Yes. Question, Signed it the same night? Answer, Yes sir. Question, And did he have a hearing on the matter of disorderly conduct? Answer, No sir, I believe he forfeited his bail. Question, How much bail did he put up? Answer, I don't know, sir. I don't know sir. Question, Did you testify, were you in court when he was tried on the careless driving charge? Answer, I don't know whether he came to court or paid it, sir. I remember he paid for the damages to the car that he struck. Question, Were you in court when he plead guilty, if he did, to the disorderly conduct charge? Answer, I don't know whether he plead guilty in court or plead guilty and paid the fine, sir. Question, Didn't you tell me you were at every court session?

Answer, Yes sir. Question, How many court sessions are there a week? Answer, One a week. Question, No more than that? Answer, No sir, unless there is something special. Question, When you schedule a court appearance, it's for that one night the judge will sit if you book him for a court appearance at a certain time? Answer, Court night is Wednesday night. Question, And you book him for a court night, you don't have them there another night when there is no court? Answer, No sir. Question, And you schedule him for November 30th, and the thing was disposed of November 26th. How do you account for that? Answer, The only way I can account for it, he paid it through the violations bureau rather than come to court. Question, How do you account for the fact he was found guilty of [fol. 361] disorderly conduct on the 26th, which wasn't a court night. Suppose I tell you it is pretty well established it was a practice in Bellmawr on these drunken driving cases where because they were sorry for people and all that sort of thing and depending on the financial ability of the individual, he was fined varying amounts on the disorderly conduct charges, and fifteen dollars on the careless driving charges. Are you familiar with that practice or aren't you, or are you familiar with the fact that practice existed at one time during the time we are talking about? Answer, Would you mind rephrasing that. Question, In going through these complaints, and going through the dockets of the Bellmawr municipal court, there appears to be a pattern that in drunken driving charges have been changed to a lesser offense on occasions, and where the change is made, almost invariably the change is from drunken driving to careless driving under 97, in a disorderly conduct charge, and the careless driving charge is disposed of for fifteen dollars, while the disorderly conduct charge is disposed of by a guilty plea with the amount depends on the financial circumstances of the accused, and that seems to be the pattern followed in the Borough, it may not have applied to everybody, it may only apply to hardship cases, but isn't it a fact that practice existed and you knew about

it? Answer, Yes sir. Question, We don't have to quibble about it, it happened and it was part of something down there? Answer, Yes sir. Question, In Franklin's case, it was done by somebody and you may have had a part in it, but you think in your own mind you can justify it. Answer, Yes sir. Question, Number 5611, John Gregal, charged originally with drunken driving, changed to careless driving by writing over '50' and putting in '97' and disposed of in the violations bureau for ten dollars and five dollars, [fol. 362] which was received by Mrs. Naglee on a careless driving charge, and I ask you whether or not you made that alteration? Answer, That is my writing. Question, Do you recall whether there was a disorderly conduct charge in this case of Gregal's? Answer, No sir, I do not. Question, There is a record of Gregal having been charged with disorderly conduct, and it was disposed of on a guilty plea with a fine of fifty dollars and costs of five dollars. Do you remember that at all, whether you testified or not, now that was disposed of on a court night although the other offenses are run through the violations bureau. Answer, No sir. Question, Number 5537, May 28th, 1960, Linwood Finney, truck driver, Pennsgrove, charged with drunken driving under section 50, and written over '50' is '97' and in the careless driving box there is a ticket to indicate the charge as careless driving you made the complaint and Badini and Bagroski accompanied you. The charge was changed to careless driving, and disposed of by the court action on 6-20-60. It wasn't a court appearance. The court appearance is down as June 15th, 1960, and it shows that went through the violations bureau and that money was received ten and five, careless driving. Answer, No sir, that is not my writing. Question, Now, in the Finney case, you charged Finney with disorderly conduct and he forfeited fifty dollars bail for non-appearance. Do you recall the circumstances? Answer, If you're asking me about one disorderly conduct charge, I think if you will check, you will find out I have had a lot of disorderly arrests. I can remember a time at Dick Lee's, we locked up ten or fifteen

a night. You are asking me about one disorderly charge. Where is the needle in the haystack. I don't remember. Question,"

[fol. 363] Mr. Aiken: Stop there, and go to page 58.

The Court: All right, page 58, continuing.

"Question, Number 5366, February 7, 1960, 2:40 a. m., Herbert W. Brining, truck driver, originally charged with drunken driving on the complaint, and over the 50 is written 97 which is careless driving disposed of in the violations bureau for ten and five, for careless driving, and I ask you if you made the change? Answer, No sir. Question, But you remember the case? Answer, Yes, I remember the case. Question, Number 5311, January 10, 1960, William R. Snyder, Camden, a deck hand originally charged under section 50, drunken driving, changed to '97', careless driving charge disposed of according to the record on the back of this complaint on January 20, 1960, plea of guilty, fine ten and five, and signed Saul Teitelman. The receipt shows receipt of ten and five, by Mrs. Naglee on careless driving charge, and I ask you whether or not you made that change. Answer, No sir. Question, Now, do you recognize that as being Judge Teitelman's signature, if you know it. Answer, I would say that is the Judge's signature. Question, That is not your signature? Answer, No sir. Question, Are you aware of the fact you charged Snyder with disorderly conduct and that matter was disposed of on January 10th on a plea of guilty and a fine of one hundred dollars and five dollars costs? Answer, He was also charged with disorderly. Question, Snyder? Answer, It must've went into court. Question, He did? Answer, Yes sir. Question, Actually tried and defended? Answer, To the best of my recollection. Question, He plead guilty? Answer, To the best of my recollection, I would rather say I don't remember on that one."

[fol. 364] Let the records show that this is the alleged statement of Helen B. Naglee.

"Helen B. Naglee, sworn, by Kaplan: Question, Now, Mrs. Naglee, you are connected with the Municipal Court in Bellmawr? Answer, Yes. Question, In what capacity? Answer, Court clerk and violations clerk. Question, That work deals with police work involving traffic cases, matters of that sort? Answer, That is right. Question, Mrs. Naglee, to get this matter off the ground, I would like to question you about certain summonses and I want to inform you I am the Assistant prosecutor and that this office is working under a Supreme Court order, dated last June, directing originally the Attorney General of New Jersey to investigate the Municipal Court of Bellmawr with reference to irregularities in the handling of motor vehicle matters, and the Supreme Court has further instructed the Attorney General to submit the case to the Prosecutor of Camden County, for further investigation. I want to ask you some questions, but before I do, I want to advise you anything you say must be voluntary and of your own free will and accord, without any threat, promises or coercion and anything you say may be used against you or any other person in any subsequent action, and you have the privilege of refusing to make any disclosures which you feel may incriminate you. Do you understand that? Answer, Yes sir. Question, Are you willing to proceed? Answer, Yes sir. Question, How long have you been a violations clerk in Bellmawr? Answer, I think I went in in 1947, I think it was 1947. Question, You have been a court clerk for some length of time? Answer, Yes sir. Question, What are the duties of the violations clerk? Answer, That is for people who have violations that are not serious, doesn't have to come before the judge. They would sign a waiver. Question, [fol. 365] There are matters where you might dispose of them on payment of the proper amount? Answer, Minor violations. Question, What is the duty of the court clerk? Answer, As a court clerk, I prepare the cases for the judge, like disorderly cases and sit with him in court on court nights. Question, And you keep a docket of the cases? Answer, Yes. Question, You act in both capacities? An-

swer, Yes. Question, And issue receipts where it is necessary? Answer, Yes. Question, And you make returns where the matters are disposed of and there is excess money involved? Answer, What do you mean? Question, If there are any monies that are surplus, after a matter is disposed of, for instance if the fine is less than the bail. Answer, Yes, I return the money. Question, To the person entitled to receive it? Answer, Yes sir. Question, Mrs. Naglee, you're probably aware of the fact that this investigation stems from reports and later evidence of the fact that motor vehicle summonses have been altered and changed in some cases. Answer, Yes. Question, Do you want to say generally that was a fact, there have been cases where tickets have been changed or fixed, whatever you want to call it? Answer, I would rather say altered. Question, In certain instances? Answer, Yes. Question, And that has been a practice for some time in Bellmawr? Answer, It wasn't—I don't know how to put it. It wasn't a practice, it was a case where someone had gone to the chief or something, it wasn't all cases. Question, Not all the cases? Answer, Someone had a hardship case, he went to the arresting officer and he in turn went to the chief and he would try to give the person a break. Question, If the chief or the arresting officer or possibly you were contacted with a request to change it, alter it, and you felt like doing it, it could be done [fol. 366] if the chief would direct you to do it, but the chief always had the consent of the arresting officer? Answer, Yes. I never did one of my own. Question, There was an arrangement? Answer, The arresting officer usually went to the chief. Question, But it was known to the chief? Answer, It was really mostly in serious requests or where the point system was going to take the man's license. Question, I just wanted to discuss the practice—"

Mr. Malandra: I object to this next portion.

The Court: Yes. Stop at question "I just wanted to discuss the practice". Strike the whole rest of the page.

Mr. Malandra: Go to page 81, bottom of the page.

The Court: Go to page 81, continuing.

"Question, Next is number 5291, November 29, 1959, Phyllis M. Zippel, and in the 'other violations' block there now appears 'R. S. 97:4-97' where the '97' appears, there has been an erasure. I have no way of telling what was under there, we do know and we have a record that Phyllis Zippel was examined on November 29th for drunken driving. We have that information and you won't know what that report shows, of course. Answer, No. Question, This was disposed through a violations bureau? Answer, That's correct. Question, And I'm going to ask you this question. Answer, I had nothing to do with this. It is signed E. G. The chief collected the fine. Question, How do you know? Answer, E. G., I had nothing to do with it. I went in the next morning and he said Helen— Question, He took care of all the money? Answer, That's correct. Question, In this [fol. 367] case there was no disorderly conduct charge, just the fifteen dollars? Answer, No."

Mr. Malandra: If Your Honor please, I object to that portion.

The Court: I don't think there's anything wrong with it. I'll leave it in.

Mr. Malandra: Your Honor, page 84, I believe.

The Court: Stop here, and go to page 84.

"Question, Next is 5311, William R. Snyder, dated January 10, 1960, again he was charged with careless driving. Our records indicate he was charged with drunken driving, and in the summons fee '50' appears very clearly under the '97' written over it. The original charge was drunken driving, changed to careless driving. I show you this and ask you if you can tell me who made the change. Answer, That is the judge's writing. The judge heard it, but I changed it. That is my '97'. Question, And he heard it? Answer, He heard it as careless driving. Question, As careless driving charge? Answer, Yes, was he examined? Question, Do you recall whether Chief Garrity had instructed you to make the change?"

Mr. Malandra: I ask it be stricken.

The Court: "Do you recall whether Chief Garrity had instructed you to make the change" and the answer will be stricken.

Mr. Malandra: And the next question and answer?

[fol. 368] The Court: All right, continuing.

"Question, Our records indicate a plea of guilty and a fine of one hundred dollars and five dollars costs of disorderly conduct, William R. Snyder on 1-20-60. Answer, He was arrested on the 10th, one hundred five dollars. Question, And this ten dollars and five dollars here? Answer, And one hundred five dollars on the disorderly, and I wouldn't doubt but it looks like if the defendant appeared. Question, You think the defendant appeared? Answer, I couldn't tell you, you could see the hearing date in your traffic docket. Question, What would that indicate? Answer, Well, whether there was a hearing or whether it was taken care of in violations bureau. We have the marked hearing. I couldn't swear to it. It's marked hearing. Question, Then it would appear that this matter was disposed of at a hearing? Answer, That is the way it looks in the docket, I can't recollect. Question, Do you have many disorderly conduct cases in your court during the course of the year? Answer, Do we have many? Question, Yes, do you have many? Answer, Well, they run in cycles. Most of it is disorderliness. Question, But you do have them, they're not unknown to your court. Answer, No. Question, And when these disorderly conduct cases come up from time to time, where they have no reference at all to a motor vehicle case, such as we have been discussing, what does the judge usually fine them? Answer, It depends how serious it is. Most of our cases are at Dick Lee's and 'unable to give a good account', something like that. They range from twenty-five to one hundred dollars. At Dick Lee's we have habitual people come back there and they drink. It's usually one hundred dollars or so, because he is trying to break it up. Question, In other words, these disorderly conduct fines in [fol. 369] these cases are not out of line? Answer, No. Question, Are they lower? Answer, Fifty dollars, one hun-

dred dollars, some of them are legitimate. Question, They average out the same as the other cases? Answer, Yes. Question, Where automobile violations are involved? Answer, That is a set fine. Question, You said you made the alterations heard by the judge and you don't know whether — Answer, No. Question, Next is 5366, Herbert W. Brining, charged with drunken driving. You can see the '50' over which has been superimposed '97', which is careless driving, and disposed of in the violations bureau, on a careless driving charge, fine of ten and five. I ask you to look at the face of the complaint and let me know whether or not you know who made that alteration. Answer, I did. Question, That was changed from drunken driving to careless driving? Answer, I did."

Mr. Aiken: Go to page 94.

The Court: About one quarter way down 94 is Linwood Finney. We'll go to that.

"Question, The next is 5537, dated May 28th, 1960, Linwood Finney, again '97' seems to be written over '50', when the drunken driving statute is inserted and added was 'driving too fast for conditions' and this was disposed of in the violations bureau as ten and five on a charge of careless driving. Our records indicate that Finney was examined for drunken driving and I ask you to look at this complaint and any other parts that you wish and let me know if you can, who made that alteration. Answer, I did. Question, You made the alteration? Answer, Yes. Question, And you received the monies? Answer, I did. Question, And so on? Answer, Yes. Question, And I call to [fol. 370] your attention the fact that the defendant forfeited fifty-five dollars bail for disorderly conduct. The record indicates that there was fifty-five dollars deposited, which was forfeited by this fellow, Finney. Answer, Yes. Question, Would you know what that fifty-five dollars was put up for? Answer, Well, I guess that's all that the chief accepted from him, I don't know. Question, You forfeited? Answer, Unless he told them if you go to court, there will

be fifty-five dollars and fifteen dollars, and whatever that is, and he didn't show up. It went in as a forfeit.

Mr. Corbin: You want to change your docket there on 6-22-60.

Question, How was the fifty-five dollars applied? Answer, Failed to appear, and he had a receipt on it and forfeited fifty-five dollars, that would be in there. Question, What happened to the fifty-five dollars? Answer, It went to the Borough. When it is forfeited, it goes to the Borough. Question, And this was bail for appearance on the drunken driving charge? Answer, He was told his fine would probably be fifty-five dollars and accepted it as bail and then he just forfeited and all disorderlies go to the Borough. Question, But the bail was for appearance for the drunken driving charge? Answer, No, the bail was for appearance in the disorderly. Question, Do you know how much with this case? Answer, No, I don't. Question, No sense of me trying to draw a lot of conclusions and opinions. Answer, What was on that, that was changed to careless? Question, Yes, careless driving. Answer, Whoever took the bail must have took for that and the doctor, if he was examined by the doctor, and broke it down for me. Question, Next is 5611, dated June 2nd, 1960, John Gregal and again '97' is written over '50' which is the drunken driving statute, and, 'too fast [fol. 371] for conditions' and disposed of through the violations bureau and you indicate a fine of ten and five for careless driving and fifty and five for disorderly conduct. Do you remember anything? Answer, It just follows right here in the book. Question, Do you remember anything particularly about it? Answer, No, I do not. Question, But if the pattern were followed you get your instructions to change from Chief Garrity and he got the money and turned it over to you."

Mr. Malandra: I object and ask that be stricken.

The Court: All right. It will be stricken. Now, let's go to the middle of 98.

"Question, Number 5759, dated November 9, 1960, Robert A. Franklin and again apparently a change from '50' to '97' and the addition of 'driving in and out of traffic over line' a court action, plea of guilty ten and five, signed S. Teitelman and your receipt indicates receiving ten and five and I ask you whether or not that signature is of Judge Teitelman. Answer, No it is not. Question, You wrote that? Answer, Yes. Question, On the front of the complaint there is some change. Would you know who made those, Mrs. Naglee? Answer, I did. Question, You made them? Answer, Yes. Question, And this again was one of those cases. Answer, That's right."

Mr. Malandra: I ask that that be stricken "and this again was one of these cases".

The Court: I'll overrule it.

"Question, Number 5157, dated October 4, 1959, Robert T. Killian, again it is apparent that the '50' has been here [fol. 372] and written over '85' in black ink, incidentally, and disposed of by the court action, signed as S. Teitelman and ask you whether that is his signature or whether you signed it? Answer, I signed it. Question, He knew nothing about this, in other words, he didn't know anything about it. Answer, No, he didn't know anything about it. Question, Do you know who made the change? Answer, I made the change. Question, From drunken driving to careless driving? Answer, No, passing on shoulder. Question, In this case, there was two hundred fifty dollars bail put up by A. Del Rossi, conditioned on the appearance of the defendant in court on the 21st of October, and this matter was disposed of on October 14th which is a week before the appearance date. Do you have a record of having received the two hundred fifty dollars or any record of that bail transaction? Answer, No, I don't. It was paid to James Lee. He's one of our dispatchers. I don't know, I didn't. I must have received it the same day as I did the others. Question, What did you do with the cash bail when you received it? Answer, Cash bail? Question, Yes, You de-

posited it? Answer, I applied it. Question, Well, let's say there was a drunken driving case, and all the arrangements disposed of, and what did you do with the cash temporarily? Answer, Well, sometimes I didn't deposit it. I didn't deposit it as often as I should have, I never knew this was going to happen."

Mr. Malandra: Now, Your Honor please, I object, The question "Well, let's say there was a drunken driving case" and so forth.

The Court: No, I think he is talking about anybody else's. Overrule the objection.

[fol. 373] Mr. Malandra: Your Honor takes the objection I make to this entire statement because each question gets asked, there's a large long statement made by the Prosecutor and I know each one of them, he makes a statement that is absolutely prejudice to the defendants. To the beginning of each summons, and once again I show you and once again I show you, where it's been altered, and so forth, and I think the questioning like this, which says that a hypothetical case where there is no arrangement—

The Court: All right, we'll throw it out then, I don't think that's important. Now, where do you want to throw it out to?

Mr. Malandra: Starting at the next page is all right.

The Court: All right, continuing.

"Question, Well, I mean you have no recollection of this, and there is no record in your books of whether DelRossi got his money or not? Answer, He evidently did, or you wouldn't have the white slip. See, when they get it back themselves, like someone puts it up, they turn in that white slip and they get their money back. Question, Don't you ever get receipts or insist on receipts when you pay money back from the individual instead of accepting this back, you could say 'Received from the Borough of Bellmawr?' Answer, He had his proof that we had it, the proof he paid the two hundred fifty dollars. Question, You depend on the fact you gave him a licking in court in case he claims he didn't get it back? Answer, We don't know. Question, Doesn't the

administrative office regulate this procedure for money returned? Answer, Where I return bail, I return it in check. I have a municipal court account and you don't get that [fol. 374] cash anymore. You get it back by check. Question, Killian, you did make the change? Answer, Yes, I did."

Mr. Aiken: That's the end. I would like to ask the court to refer to page 193 of the Garrity statement of Mr. Kaplan.

Now, from 193, 194, 195, on the bottom of 195 right through what happened to the doctor's reports, I would like to ask the court to admit that portion of—

The Court: The answer is no, I won't. You agreed that you were going to refer to the specific cases so under the circumstances, the answer is no. Denied. Anything else? Jim, I mean, as I understand it you all agreed to certain things. Now we start fooling around, we'll be piddling around here for the next week. No, do we have anything else?

Mr. Aiken: That's all.

Mr. Malandra: That's all.

The Court: All right, two o'clock. Court is adjourned for lunch.

(Noon recess.)

(Jury roll-call taken, everyone present.)

The Court: By way of explanation, we have been a little busy. We have been bringing you in and chasing you out and so on and so forth. Well the purpose of course, of [fol. 375] that and may I say again counsel both for the state and the defense have been most cooperative, we have been attempting to shorten the case and as I say, counsel as far as both of them are concerned, have been extremely cooperative and I think from now on, we're going to need the services of the jury quite frequently. And again, as I say, I appreciate the efforts of counsel to cooperate with the court. Now, I think perhaps we have arrived at that part of the case that has to do with the reading of the statements.

Mr. Aiken: Yes, Your Honor.

Mr. Malandra: Yes sir.

The Court: My suggestion, therefore, would be that Mr. Garifo, the certified court stenographer undertake to read the statements to the jury. I know he has had considerable experience in a situation like that, he knows all of the rules and regulations, not to emphasize but rather deliver the matter in just an ordinary tone of voice without stressing one part or the other. Mr. Garifo, you have already been sworn, it will not be necessary to swear you again.

IN THE SUPERIOR COURT OF NEW JERSEY

APPELLATE DIVISION

Docket No. A-228-63

STATE OF NEW JERSEY

VS.

HELEN B. NAGLEE, EDWARD J. GARRITY, and EDWARD VIRTUE,
Defendants-Appellants.

CRIMINAL ACTION

ON APPEAL FROM THE CAMDEN COUNTY COURT

Joint Appendix

[fol. 377] LAWRENCE GARIFO, having been previously sworn, testifies as follows:

Direct examination.

By Mr. Aiken:

Q. Mr. Garifo, I understand you have before you a transcript dated November the 10th, 1961, which you took down and have later transcribed?

A. Yes sir.

Q. And will you tell us where that transcript was taken?

A. In the fire hall in Bellmawr, New Jersey.

Q. And who conducted the taking of the transcript?

A. Mr. Rigg, Deputy Attorney General at the time.

Q. And will you turn to page 62 of that transcript, please, whose testimony appears on page 62?

A. Edward Virtue.

Q. Now, during the course of that last two or three days, we have been marking certain portions of that transcript and I think the judge has indicated on the pages which portions you are to read to the jury. I wonder if you would be kind enough to start reading those portions from Mr. Virtue's statement.

The Court: If I understand it, you asked him to read beginning at page 62 the alleged statement of Mr. Virtue, is that correct?

[fol. 378] Mr. Aiken: That is correct, Your Honor.

The Court: You may proceed.

(The following material being directly quoted from transcripts by the witness.)

"Edward Virtue, having been duly sworn, was examined and testified as follows:

By Mr. Rigg:

Q. You are a sergeant?

A. Detective.

Q. As you know by now, detective, I am working under a Supreme Court order issued last June directing me to investigate certain irregularities in the handling of motor vehicle matters in the municipal court here in Bellmawr, together with various persons having any connection with the court including the police department. That is why I scheduled this day to ask you questions pertaining to this investigation. Before I do, I want to advise you anything you say must be voluntary, of your own free will, without threats or coercion or promise, or reward and anything you do say may be used against you or any person in a subsequent criminal proceeding, or proceedings, in the courts of our state. You do have under our statutes, as you may know, a privilege to refuse to disclose any information which may tend to incriminate you. However, if you make such a disclosure, with knowledge of this right and without coercion, you thereby waive this right or privilege with regard to any phase of this investigation. This right or privilege that you have is limited to the extent that you as a police officer once sworn and asked questions pertaining to your office and your conduct therein, if you refuse [fol. 379] to answer, you may then be subject to a proceeding to have you removed from the department.

A. Right.

Q. How long have you been on the Bellmawr Police Force?

A. Total of about eight years, four and a half years regular, the rest as a special officer.

Q. How long have you been a detective?

A. About three months.

Q. Now, I assume that you are aware of the specific problem about which this investigation is concerned here?

A. Yes.

Q. I also assume that you are aware of the practice of alteration of motor vehicle summonses here in Bellmawr?

A. I am aware of the alterations.

Q. Yes?

A. Yes.

Q. Am I correct in my assumption that you participated in this practice of alterations?

A. Yes.

Q. Would that participation be in relation to summonses issued by you and other officers or just in relation to your own?

A. My own.

Q. Did you in the years that you have been on the force at any time, seek to have a summons issued by another fellow officer altered?

A. No. Wait a minute, let's go back now. You say in my whole course as a police officer?

Q. Yes.

A. It's possible that I might have went to another one, but to be specific, I couldn't answer that.

Q. Why?

[fol. 380] A. Well, there's a lot of tickets.

Q. Is there a lot of ticket fixing?

A. Well, I mean, you see what you have there—

Q. You're saying you don't recall ever seeking having a ticket issued by a fellow officer on this department altered, is that what you're telling me, you don't recall it?

A. No.

Q. Have you ever sought the alteration of tickets by officers in departments other than Bellmawr?

A. No.

Q. I show you complaint number 5157, issued on October 4, 1959, to Robert T. Killian, charging the defendant with driving while under the influence, which charge was thereafter changed to 39:4-85, receipts showing fine of five dollars and costs of five dollars, for passing on shoulder and indicates on the back that it was done apparently in court. Do you recall that?

A. No sir, I don't recall—I don't remember.

Q. Approximately how many drunken drivers summonses do you issue in a year?

A. I couldn't answer that.
Q. Approximately.
A. I couldn't answer that.
Q. Twenty?
A. Maybe."

The Witness: That is the end of Mr. Virtue's statement.

Mr. Aiken: Would you proceed to Mrs. Naglee's which I believe starts on page 197.

The Witness: Yes. "Helen B. Naglee, having been duly sworn, was examined and testifies as follows: By Mr. [fol. 381] Rigg: Question, Mrs. Naglee, as you know, I am working under a Supreme Court order dated last June, whereby or whereunder I am directed to conduct an investigation of certain irregularities in the handling of motor vehicle cases in the municipal court, and apparently the police department here in the Borough of Bellmawr. And, it is pursuant to that order that I have asked you to answer some questions which I want to put to you. Before I do, however, I want you to be fully aware of the fact that anything you say must be voluntary and of your own free will and accord without any threats, promises, or reward or coercion. You do have a privilege to refuse to make any disclosures, or give any answers which tend to incriminate you. Things that you tell me today may be used against you or any other person in a subsequent criminal proceeding. That is why you have that privilege under the law. However, if you do answer a question, and make a disclosure, you are by so doing, you thereby waive this right or privilege that you have in relation to the entire investigation. Do you understand that? Answer, I do. Question, And understanding that, are you willing to proceed then? Answer, Yes. Question, All right. Now, am I correct in my understanding that you are the violations clerk here in the Borough of Bellmawr? Answer, That is correct. Question, And you are also the court clerk? Answer, That's right. Question, How long have you

been court clerk? Answer, 1947. Question, Continuously? Answer, No, six months in 1960 I was replaced by Mrs. Ferry. Question, As court clerk? Answer, Yes. Question, And did Mrs. Ferry carry on the duties and responsibilities and functions as such? Answer, She didn't have the full responsibility. They never had. At the request of both the auditor and the judge, to have my books audited before I turned them over to her, and they never seen fit to have [fol. 382] that done so I continued handling the books, but she sat in court and then she would come in the next morning and go over and I came out at night to lock up the monies that were taken in because she didn't have that authority. Question, Taking the money or lock it up? Answer, See, to lock, she didn't handle any money. When a fine is paid Mr. Lee was deputized to accept the fine, rather than have it collected in the court. So then I wasn't allowed in court so I would, after the fines came in, I would take them then and then I would lock them up. Question, You say you weren't allowed in court, what do you mean by that, an order you couldn't go in the courtroom? Answer, There was a few of the councilmen were against me, being the court clerk, and it was they that were lax in not having my audit taken. Mr. Smiley was the new auditor that year and he insisted and I called Mr. Aiello, and he also said the books should be audited before I turned them over. They never saw fit to have it done, so I never turned the books over. I was responsible until they were audited. Question, Did those councilmen tell you or any of them tell you you couldn't go in the courtroom? Answer, I couldn't sit. I wasn't on the bench when the people came up. Instead of Mr. Lee collecting the fines, I collected them. Question, Am I correct in understanding all Mrs. Ferry did was sit in the court? Answer, She sat in court and then she came back the next day and she made entries in the docket. We don't do it after court because it was late and the next day she would come back and make entries in either the ticket docket or the criminal docket, and also

made out the monthly reports. I assisted her with that, and if there were to be any warrants issued, I did show her how to make a warrant and how to send them out. And I [fol. 383] let her make out the final notices. You know, where they don't appear. Question, Could you tell me what six month span that was in 1960, when did it commence approximately? Answer, she was sworn the 28th of April, and I think she took over the 15th of June. It took that long before they replaced me. Question, So she would have served from the 15th of June— Answer, Until December 31st. Question, Then you went back into your normal functions as court clerk? Answer, That's right. Question, During that six month span, then, from the 15th of June to January 1st, or the 31st of December, you say she made the entries in the court docket? Answer, That's right. Question, That would be the motor vehicle or the traffic docket and the criminal docket? Answer, Yes. Question, Did you make any during that six month span in the docket? Answer, Yes. Question, Now then, which ones did you make and which ones did she make, was there any agreement as to how that was to be handled or what? Answer, She made some and I made some during that time. Question, Now, which ones would she make. Did she make all of those which came into the court during her six month period? Answer, She didn't make any receipts at all. Question, No. Did she make the entries in the docket book after the disposition? Answer, After a court night, yes. Question, She would enter anything that happened in court? Answer, Yes. Question, During the daytime that people came in and paid the fines, that was handled through the violations bureau instead of by way of hearing, did she enter any of those? Answer, No, because she wouldn't be there for that. She only came back to do the court work, what had taken place in court and then she would go home. Question, You would take in the fines as violations clerk and then you would enter them in the books as court clerk? Answer, Yes. Question, And

[fol. 384] then you never turned any of those over to her to handle? Answer, No, and she only made the green cards that took place in court. She never did anything with the violations. Question, And my last question along these lines are do you know did she make any false entries pursuant to the operation which was going on there of altering summonses? Answer, No, she did not. Question, Not to your knowledge? Answer, No. Question, Do you know Mrs. Naglee, was she aware that this was happening or was there an attempt to keep this from her? Answer, Well, you would have to ask her that, because I wouldn't know. I didn't make any bones about it, I didn't—I made entries without consulting her, because I didn't feel I needed to consult her. To me, she still wasn't a court clerk because I was still doing the work. What she done was little trivial things, she didn't have the responsibilities because they didn't see fit to do it. Question, Well, my question again, perhaps it was two-fold and maybe ambiguous. Did you affirmatively attempt to keep her from knowing that these alterations were occurring? Answer, No, I just did what I did in ignorance of her, because as she would come in in the morning and would have them, our receipts are numbered and that is the way she would enter it into the docket, and then when she was doing that I would start to make the disbursements either went to the state, county or borough. Question, And you say that during that six month period, she made up the report for the judge, is that correct? Answer, With my assistance. She never caught on to it. You mean the monthly reports? Question, Yes, she wouldn't— Answer, She couldn't do it on her own. She never could grasp it. I made samples that the state gave us, but she never grasped those to do on her own. We worked it together. Question, What is shown in the [fol. 385] monthly report, what data goes into the monthly report? Answer, Do you mean the state, county or the ones that go to Mr. McConnell. Question, The ones that go to McConnell. Answer, The fines and costs that were

taken in traffic. Question, Was it all traffic, does it show all the traffic fines? Answer, Yes, fines and costs go in one column, and borough parking in another column, and criminal go in another column. Question, Now, how were these figures compiled and placed in the columns. Were they done by a reference to the summonses and complaints. Would you have those together for the month and then go over those and enter them into the report? Answer, Well, we also kept a work sheet on what took place in court, and then broke it down with the ticket control, where you have to refer back to the ticket control, the ticket that was issued and when it was disposed of. Question, What I am getting at, is there specifically and direct reference as double checked to the summons when that report is made up? Answer, I don't know what you mean. You mean take out a whole month's tickets? Question, That's right. Answer, Well, you have your disbursement book, you would refer to your traffic ticket book, and then we transfer the monies in the traffic cash book to the regular disbursement book. We carry two sets of books. Question, During the course of working, and making up the monthly report, would Mrs. Ferry have had occasion to see the summonses for the month? Answer, Yes, she had wanted to see them. They were there. They were always available to her. Question, They were available? Answer, Yes they were. Question, Now, in the course of her doing this, would she have reference to them other than being available, would she naturally go to them or did she— Answer, She would have no use because she didn't handle the monies. [fol. 386] Question, So that you don't know whether she ever saw any of these? Answer, No. Question, She wouldn't normally in the normal course of functioning as court clerk? Answer, No, not what her duties were. Her duties were to be the whole thing. Question, But she never just never assumed them? Answer, Mr. Stanton was going to see that the books were audited, but for some reason, he never came around and I told Mr. Aiello, and he said

definitely not to turn the books over to anyone until I had an order. I talked to Mr. Smiley, and he told me the same thing. The judge talked to Mr. Stanton and asked him would he see the books were audited so that they would be turned over, so they never did it and I wasn't going to get on my knees and beg them. Question, Did you have any objection to Mrs. Ferry taking over the position of court clerk? Answer, The woman personally, no. I felt very sorry for her. I was a little resentful for it, they did it for spite. Question, That would be these councilmen? Answer, Yes, I felt it was done for spite. Question, Would you feel reflecting back over the last six months, do you feel subject to this resentment which you naturally felt, that you cooperated with her? Answer, Believe me, I tried to show her everything that I could show her so that she could never say I wasn't showing her and on the back of the tickets, can I touch this— Question, Yes. Answer, Where it would be like, here like you know, it would be in here where sometimes if she would copy, just to make the green cards, it would be like I will say James Lee, they put on here J. L., H. B. N. or J. L., H. B. N., whoever collected it. She would probably be there and I would ask her if she would put M. F. and she said no. I said you are making out the ticket, that is the reason I am asking you. I am responsible, my initial would be first because I took it. In any case there was any reference to why her initial [fol. 387] would be on there. Question, My question is, Mrs. Naglee to the extent you did do it—"

Mr. Malandra: What page are you on, please?

The Court: All right, gentlemen, I'm referring you to page 208. Directing your attention to about one quarter down the page, the last sentence being "in case there was any reference as to why her initial would be on there." Then I have on here stop and go to the bottom of page 215. Is that your notation?

Mr. Aiken: That is right.

Mr. Malandra: That is right.

The Court: And, on page 215, it says start here.

"Question, My question is, Mrs. Naglee, to the extent you did do it, you didn't feel guilt about having done it, when you did it, and was that because you felt that under the circumstances you were morally justified in doing it or did you feel in addition to feeling morally justified, that you were legally justified in doing it? Answer, I didn't take that into consideration, I just knew the chief, that guy probably came in for some reason and his wife or somebody told him a sad story, and I was as ignorant, I am ignorant, and I changed it. Question, Did you know at that time that it was unlawful to change it? Answer, Truthfully, no, I didn't think it was unlawful. Question, Did you feel that under the law you had the power to do that? Answer, Well, shall I say I didn't have any regrets when I did it. Ques-
[fol. 388] tion, That is not my question. My question is did you feel that under the law you had the power to do that? Answer, I didn't take that into consideration, I just changed it. Question, Now then, what I am trying to ascertain, I am only concerned about you at this time, I will take to Chief Garrity, to the extent you considered him your boss, you knew at the same time that he had no lawful right, did you not, to ask you to change these? Answer, Well, I will tell you the truth, I didn't take that into consideration, he had a right or not a right. I guess you want me to say that he had no legal right, but I didn't stop to think of the legal terms of that offense. I just did what I done, and shall I say I am ignorant as to legal rights. Question, No one ever indicated to you did they, Mrs. Naglee, that this was lawful, that this was in the province of the Chief of Police and clerk to change summonses? Answer, No, neither did they ever say that it wasn't. Question, Right. Now, Mrs. Naglee, on some of these summonses, as we discussed before, in the space for 'court action,' there are notations of a date where there was purportedly an appearance, and a plea of guilty and disposition of guilty, designation of fine and cost, and the purported signature of the judge. When,

in fact, of course, the defendant never appeared in court. Answer, That's right. Question, Did you do that? Answer, Yes. Question, To the extent you didn't feel guilty about this, Mrs. Naglee, did you conduct yourself in this area openly before the judge? Answer, Well, I think I told you before that while the judge probably would be hearing a criminal case or something, I never had any guilt, I just did it on the back while he would be handling other cases. I never openly showed him anything like that. Question, Why not? Answer, Well, of course I did not. Question, I know you didn't, what was the reason for not having done [fol. 389] so? Answer, Because he was busy. Question, You are under oath. Answer, I know, and I am telling you the truth. Question, That is the only reason? Answer, I didn't feel it was necessary. I did it and there I am going back to ignorance again, I heard it was perfectly all right to do what I was doing, as long as the Borough got theirs, I was interested in the Borough, to tell you the truth. Question, You have already said, however, though again under oath, that you thought it was all right what you were doing, morally, but you knew you didn't have the authority to do it. You have told me that. Answer, I have admitted that. Question, Now then, why didn't you let the judge know what you were doing, or did he? Answer, No, I didn't let him know, no. Question, Why not? Answer, Mr. Rigg, I just didn't tell him. Question, Why? I know you didn't tell him, I'm asking you why. Answer, Well, there is only one answer, because I did not. Question, Do you have authority to sign the judge's name? Answer, Yes I do. Question, Do you have his authority to sign his name to disposition record on the back of the motor vehicle complaints? Answer, Well, I have done it, but since June 2nd, he has signed everything, he's got everything, every little detail and everything else. Question, He keeps to himself now. Prior to that time, did you have authority to fill in the court action? Answer, Many a time I sat there, yes, would go on with something, I would mark the back of it, and I think you will find some other cases, they're not all

illegal, but after this investigation started, Saul will have to admit, even for no appearance, I would mark it 'no appearance' while he was working, and I would mark it 'no appearance' and the date, so we could send the final notice. But he does all that now. I will be truthful, I don't think he thought that I was doing it. Question, To the extent [fol. 390] that he would tell me that you did not have the authority to sign his name, that would not be correct? Answer, if he did, that would be the first time. I signed all, with the exception of the monthly statement, until Mr. Heine became Prosecutor, I signed them up until then for Judge Dzick, for Charlie Rudd, and Carl Auerbach, but when Mr. Heine, the report went in there one time it was a joke or something, he said, 'From now on, I'll sign them.' I would go over it with him and show him what was what. You say as to signing his name, I wouldn't say every day, but if there is a commitment for someone to go to jail, I signed them all even if he is here, I signed his name and mine as the clerk. If we put someone in Lakeland, I signed them. He has always authorized me, and all the previous judges. Question, How long has he been a judge? Answer, Oh dear, he finished out. Question, Roughly, approximately? Answer, Five, I don't know. Question, Approximately five years? Answer, Three years is up until January '60, and he finished out Judge Dzick. He had to resign on account of going on the bench. Question, So it would be four or five years? Answer, Yes. Question, During that four or five years, did he ever ask you to alter one of these summonses? Answer, Did he ask me to alter them? Question, Yes. Answer, No. Question, Never sought it? Answer, No, he did not. Question, Do you recall in the last two years while you were acting as court clerk in open court, his amending a moving violation to a parking offense? Answer, With him amending? Question, Yes. Answer, No, I know he has amended a ticket, but I don't think he ever amended a ticket to parking. Question, Do you know? Answer, He might have amended speeding or

something. Question, Reduced the speed or something predicated upon the evidence? Answer, Yes. Question, [fol. 391] Do you know, Mrs. Naglee, whether these summonses were ever altered after they were actually handled in court? Answer, After he had heard them? Question, Yes. Answer, No. Question, Have you ever asked the chief of police here whether consideration could be given resulting in an alteration at your request as opposed to one of the officers? Answer, You mean that I — Question, That you acted as the intermediary or interceder. Answer, I don't recall. Question, If you had, would you recall? Answer, I think I would. Question, Have you ever altered a summons or complaint without the chief's knowledge? Answer, No. Question, In relationship to the issuance of bail receipts for bail which has been posted by defendants, I'm impressed by reviewing the papers here that very often bail is posted at night when you are not on duty. Answer, Yes. Question, And it would appear that whoever is on the communications or on the desk that night, the dispatcher, issues the receipt. Am I correct in that? Answer, That's correct. Question, Now, when you come in in the morning, are you then apprised of what has transpired the night before in relation to the posting of bail? Answer, Yes. Question, What do you do? Answer, What do you mean what do I do? Question, What do you do when you are told about it, are you given the money and receipt or what? Answer, Yes. Question, What do you do then? Answer, Well, when we were doing it in triplicate, with those yellow gadgets that you picked up. Question, Yes. Answer, That would be held until the hearing night. But then, now everything is deposited. Question, Yes. Did you make a record when these bail receipts were turned over to you when the cash was turned over to you in the morning, did you make a record in any book or permanent recording of bail? Answer, No. Question, Just put it in what, a drawer? Answer, In a separate [fol. 392] folder, the ones that had bail attached to them.

Question, Would the cash be right in the folder? Answer, Yes. Question, What would that be attached to, the complaint and summons? Answer, And with the bail receipt. Question, Now then, if a man appeared, and, say he was found guilty, you would take the fine out of the bail and give him the balance in cash? Answer, On the return of his receipt. Question, And if he didn't have a receipt to return, what would you do? Answer, Well, if found guilty, there will be times when they would say, 'I don't have it,' we took care of it that way. Question, Took care of it what way? Answer, Gave him the official receipt for the fine or costs. Question, And give him the balance if any? Answer, That's correct. Question, Did you get from him a receipt for the balance of the money? Answer, No, I did not. Question, I assume the same thing could happen where the man was found not guilty. Answer, It would be returned. Question, He lost his receipt? Answer, Yes. Question, You would give the cash anyway and you would make him sign a receipt or make a notation on the copy of your receipt that he had gotten this money back? Answer, Well, you mean—now, a man has posted bail. Question, He's been found not guilty, he wants his money back, and he doesn't have the copy of his receipt. Answer, Well, he'd get his money back. Question, And would he sign a receipt to protect you? Answer, No. Question, There would be no notation on the yellow copy of the receipt that he would have to sign? Answer, I don't know, you have them. Question, I don't have them all, Mrs. Naglee. Answer, I think the bail would have been returned. Very rarely he would put up bail and got it back. Usually the bail would've been to cover like the fine or costs, or else it was a bondsman and, of course, there was no money there. Question, Mrs. Naglee, in any other cases involv- [fol. 393] ing alterations of summonses, has this procedure been followed to your knowledge, of accepting bail and then applying that bail to the fine. Answer, You mean dividing it between the traffic and making it disorderly?

Question, Yes. Answer, Well, there's been a couple of cases, I don't know. Question, There was a case involving a Philadelphia resident, wasn't there? Wasn't there, Mrs. Naglee? Answer, Was there? Question, I am asking you. Answer, I will have to go over there and look. Question, I am asking you whether you recall. Answer, Ridiculous. Question, What was that? Answer, What do you want to know? Mention the name and I will tell you whether the name sounds familiar. Question, No, do you recall, Mrs. Naglee? Answer, Let's see. You mean Mr. Stanton's friend. Question, Do you recall a Philadelphia resident who posted bail in a drunken driving offense? Answer, Yes. Question, What happened to the balance of that money? Answer, It is in the safe. Question, This minute? Answer, Right this minute. Question, With his name on the envelope? Answer, yes. Question, How many other envelopes do you have in the safe with money? Answer, I have but two. Question, All right. Now, when I was asking about this Philadelphia resident, you said do you mean Stanton's friend. Is that Stanton the councilman that to whom you have reference? Answer, Yes. Question, Will you explain the circumstances surrounding that? Answer, Since this came up, I don't know anything about Mr. Stanton's friend. Question, What have you heard? You mentioned that, why did you mention it? Answer, I mentioned it because I understood he was a friend of Tom Stanton. I had heard since this came up, Tom, that he was a friend of Tom Stanton and Tom— Question, Interceded on his behalf, is that what you are saying? Answer, No, [fol. 394] he did not intercede. Tom tried to railroad Mr. Garrity, in my opinion. Question, How? Answer, He tried to get something on him. He was so provoked that he didn't make Director of Public Safety that he is out to hurt anyone or anybody, and to me, I may be prejudice, but I think it was a lot of this is all done for spite. Question, A lot of which is all done for spite? Answer, A lot of this investigation. I could be wrong, I could be wrong.

Question, Maybe my inference is not correct. Are you saying I'm being spiteful? Answer, No, I don't mean that. I realize you have a job, but I mean I think it was done, I could be wrong, but I have become very prejudice that Mr. Stanton is out to hurt anybody because he made the remark when he didn't get the Director of Public Safety's job, well, nobody was going to be happy being director, so I understand. Question, We are getting a little far afield here. I am not concerned about that. What I am concerned about is why you said, 'Do you mean Mr. Stanton's friend,' and you named the name. I was talking about this Philadelphia resident. Answer, Yes, I understood he was a personal friend of his. Question, Did you also understand that he was looking into this matter with that fellow or what? Answer, No, I didn't hear that. But when I heard it was a discussion about—I know the envelope is over there, I just don't recall his name. Was it Randolph? Question, I don't know, Mrs. Naglee. Answer, Yes, you do know. Question, I do know? Answer, You do know. Question, I don't have the summons, Mrs. Naglee. Answer, Anyway, I can't recall his name, and I understood that he was a friend of Tom Stanton; that's all I know. Question, When did you understand this? Answer, Since this thing has been going on. I heard them discussing it. Question, When was that envelope placed in the safe, Mrs. Naglee? Answer, The date is on it. Question, [fol. 395] What attempts were made in contacting the defendant? Answer, I believe Chief Garrity asked him if he would return here to our headquarters and bring his receipt, he would give him the balance that was due him. Question, When was this? Answer, Whenever the date is. Question, And then you just never heard from the chap again? Answer, No, I didn't. I don't know. Question, You don't know whether the chief did but in any event, the money is in the safe? Answer, Yes. To my knowledge it is still there, because I am the only one that has the combination, so I think it is still there. Question, You say

there are just those two that are there? Answer, Yes. Question, I would like to get those two envelopes, and I want them marked. You want to take a break, and we will get those.

Mr. Rigg: So far as the questioning is concerned, that will be all. I want to question you again, but it will be some later time.

(Witness excused.)"

The Court: Well, this is rather tedious and I know it's tedious for the jury. It is extremely tedious for the gentleman who is reading and likewise for the stenographer, so suppose we take a short recess at this time. It will not be necessary for you to climb up or down those stairs, if you want to go back to the jury room, it's all right. If you don't you can trapeze back and forth out there in the corridor and we'll start again within a short time.

(A short recess is taken.)

(Jury returns.)

Mr. Aiken: Will you continue now, Mr. Garifo, with Mr. Garrity's statement.

[fol. 396] "Chief Edward J. Garrity, having been duly sworn, was examined and testifies as follows:

By Mr. Rigg:

Question, Before I get started, because of the lateness of the hour and other commitments, I will undoubtedly have to question you again, as well as Mrs. Naglee and perhaps one or two of the other officers. I would just like to establish a few things here quickly now. Before I do, however, you I know are aware of the purpose of the investigation of your being here today. Before I ask you any questions concerning this investigation into the alleged irregularities of the handling of municipal traffic violations by your department, I want to advise you that anything you say must be said of your own free will and accord

without any threats of promise or coercion, and anything you say may be, of course, used against you or any other person in any subsequent criminal proceeding in the courts of our state. You do have under our laws, as you probably know, a privilege to refuse to make any disclosure which may tend to incriminate you. If you make a disclosure with knowledge of this right or privilege, voluntarily, you thereby waive that right or privilege in relation to any other question which I might put to you relevant to such disclosure and this investigation. This right or privilege which you have is somewhat limited to the extent that you as a police officer under the laws of our state, may be subjected to a proceeding to have you removed from office if you refuse to answer a question put to you under oath pertaining to your office or your function within that office. It doesn't mean, however, you can't exercise the right. You do have the right. Answer, No, I will cooperate. Question, Understanding this, are you willing to proceed at this time and answer any questions? Answer, Yes. [fol. 397] Question, How long have you been Chief of Police of the Department here in Bellmawr? Answer, About eight years. Question, And were you on the force prior to that time? Answer, Yes. Question, How long have you been on the police department altogether? Answer, Fourteen years. Question, During that fourteen years, chief, when is the first that this practice of altering summonses started, as best as you can recall? Answer, Gee, I don't know, it goes back a few years, but it became more critical as we started using speed watch and things like that. Question, What was that, within the last two or three years? Answer, Yes. Question, Now, am I correct in my understanding that from talking with the other officers that was the practice or the policy within the department here that no summons and complaint can be altered without your consent? Answer, Yes. Question, So that as far as you know, every altered summons was in your files and my files had to have your consent? Answer, Yes, I would say so, yes. Question, There has been quite a bit of

discussion, chief, by the various persons with whom I've talked today, to the effect that they felt or seemed to feel that there was nothing wrong with what was going on and what was being done, but that you as Chief of Police, had authority to do this. Do you believe that you had authority to do this? Answer, No. Question, Did you ever say anything to any of the officers to indicate to them that you had that you do have such authority? Answer, No, I did not. Question, Did you ever indicate to Mrs. Naglee, as Chief of Police, that you had the right to downgrade summonses or alter summonses? Answer, I think Mrs. Naglee drew an inference or misunderstanding about the procedure altogether. Question, Why do you say that? Answer, Well, she actually felt every time something happened she would come to me instead of going to the judge [fol. 398] with it, anything at all pertaining— Question, I mean in relation to these alterations, did you ever indicate to her that you had authority as Chief of Police to alter the summonses? Answer, No, I never made it specific that I had the authority. Question, Did you ever do it generally as opposed to specifically? Answer, You mean alter them generally? Question, I asked you chief, whether or not you ever indicated to her that you had this authority, and you said no, you never told her specifically. Now, did you generally tell her that you had this authority? Answer, No, I don't think I generally didn't. Question, You are not laboring or you did not labor under the belief that she as court clerk or violations clerk had that right? Answer, No. Question, Now, Mrs. Naglee has indicated to me, Chief, that in no case was a summons and complaint ever altered after it was disposed of by the judge at a hearing. Now, does this also ring true to your recollection? Answer, After the judge disposed of it? Question, Yes. Let us assume that there is a hearing and the judge made disposition, to your recollection, was there ever an alteration subsequent to that time? Answer, Not that I can recall, no. You mean amending a sentence? Question, Changing a charge, changing a fine after the

judge set the conviction and the fine. Answer, No, unless it would be a circumstance like this, where the judge might have fined somebody and left them there to be committed in lieu of the fine, and then he was unable to get the amount up or something like that; that would be the only thing. Question, Then you reduce the amounts so he wouldn't have to be committed. Answer, Yes. Question, But you would never change the charge? Answer, No. Question, You would reduce the amount of the fine and Mrs. Naglee, I assume, would show that on the back of the complaint. [fol. 399] Answer, I would imagine she would. Question, Would you ask her to? Answer, Generally, I mean I did not even bother with it. If the judge made a disposition in the case, most likely, as I said, there was a problem, probably waited around the station and couldn't get up the amount. Question, You go to court quite frequently. Answer, Yes. Question, Do you recall in the years that Mr. Teitelman has been the judge, his ever in open court altering a charge involving an operating offense to a parking offense? Answer, No, I don't ever recall, no. Question, Now again, just so I am straight. All of these alterations, so far as you know, were done after having been cleared by you? Answer, Yes. Question, Chief, I have here two envelopes, one is on the police department of Bellmawr, New Jersey, stationery, and on the outside is written the name 'Scott'. On the back is written 'careless, ten dollars and five dollars, disorderly, one hundred five dollars. Doctor, twenty dollars. Total one hundred thirty dollars.' At the end, underneath the two hundred twenty-five dollars 'less one hundred forty dollars paid, balance eighty-five dollars.' You recognize this envelope? Answer, Yes. Question, This envelope is opened on the end? Answer, Yes. Question, Do you know how this was opened? Answer, I opened it over at the hall just now. Question, In my presence? Answer, Yes. Question, Inside the envelope is an original complaint charging Joseph H. Scott of 2510 East Clearfield Street, Philadelphia, Pennsylvania, with disorderly conduct, together with a copy of the receipt to

Joseph Scott, showing the payment of a fine of one hundred five dollars for disorderly conduct, on April 6, 1960, together with eighty-five dollars in cash. Is that what was in the envelope when you opened it? Answer, Yes. Question, Who put these items in the envelope? Answer, I gave [fol. 400] Mrs. Naglee the envelope, she put it in there. Question, Whose writing is this? Answer, Mrs. Naglee. Question, And the writing on the front? Answer, I put that on there. Question, The name Scott was written by you and the figures by Mrs. Naglee? Answer, Yes. Question, Now, when did you give this complaint and money and receipt to Mrs. Naglee, and what did you tell her to do with it? Answer, I told her to put it away. I said I told Mr. Scott, but I think that somebody might think that this guy was taken over, I think Stanton is friends or some relation of Scott. Question, You say Stanton, who do you mean? Answer, Thomas Stanton. Question, The councilman here? Answer, Yes. Question, You think what? Answer, I said 'Put it away, because maybe he will come in and demand it someday, and if it is in there' —well, if Mrs. Naglee wasn't there, I'd have to get her. Question, What does that cash represent? Answer, The guy originally posted I think it was two hundred twenty dollars the night Virtue picked him up. Question, Let's go back to that night. What was he charged with? Answer, Originally, he was going to charge him with drunken driving, and then he made it 39:4-97. Question, Did he charge him with drunken driving, did he write up a drunken driving summons? Answer, He had 39:4-50 on it, and then he run the test, if I could recall now— Question, Yes. Answer, And then he changed it to 39:4-97. Question, I see. What happened after that? Answer, Mr. Scott, I think called me on the phone and came down on a Monday evening or something like that, if I am not mistaken. Question, How much time elapsed between the time of the arrest and the time that he came down to see you? Answer, a couple of days or a week. Question, What happened when he came to see you? Answer, When he

[fol. 401] came to see me, he said, 'I am sorry, I have been taking some medicine.'

He said 'I know when the officer showed me the balloon and all that, it looked like he was trying to take advantage of me.'

I said, 'Well, did you submit to the examination?'

He said, 'Yes, I wanted to prove to him that I wasn't under the influence.' He said, 'I gave him a lot of stormy weather, I admit to it, and I am sorry about it.' Question, Then what happened? Answer, Then in the meantime, why I had heard through the grapevine where we was trying to take advantage of Philadelphia motorists, you know. Question, Yes. Answer, So I mean, I told him, I said, 'Mr. Scott, do you feel that we took advantage of you?'

He said, 'No, I don't now, that night I was burned up when he wanted me to take the test.'

And I said, 'Well, didn't it turn out in your favor?'

He said, 'Yes it did.'

Then I explained to him that we had a guy who we had prior to that and had the same thing, and he died in the hospital, and we suspected him of being drunk, and he was an acute diabetic. Question, Did Mr. Scott appear in court? Answer, No. Question, When was this decision made that he didn't have to appear in court? Answer, The night he came down there, I told him that he could come back for a hearing before the judge, and what the charge would be, disorderly conduct and careless driving. Question, Yes. Answer, Or if he forfeited, it was to be up to him, and I told him what the breakdown would be, you know, in the forfeit, and he said, 'Well, I don't know.' Question, What would the breakdown be in the forfeit, he would lose it all? Answer, I didn't want him to lose it [fol. 402] all. I felt after talking to the guy he was more reasonable than that night. Virtue was burned up and he felt, he was burned up at the guy and I felt that the guy wasn't a bad guy after talking to him. He proved to me he is a sickly man. Question, It was the understanding that

he wasn't coming back? Answer, Yes, generally. Question, And at that time, you told him what the total amount of the fines and costs would be? Answer, Yes. Question, Why wasn't he given the balance of the money? Answer, Well, because of this conversation that we had had. Question, Which conversation? Answer, About that we were supposed to be trying to railroad the Pennsylvania motorists, and I asked him did he believe that and he said, 'Well, if the man comes in here with you or your brother-in-law or something and demands this money, why I would just' —it is going on so darn long now, I'd like to be in a position to bring it out or if Mrs. Naglee is here to bring it out. Question, You have lost me, Chief, I am sorry. As I understand it, the defendant came in at a later date, some days after this charge? Answer, Yes. Question, And you reviewed the matter, and, because of the circumstances, you felt he shouldn't be fined as heavily as he might be if he were to go to court, is that correct? Answer, That's right. Question, You at that time, had two hundred twenty-five dollars of his money. Answer, Yes. Question, Which had been posted as bail? Answer, Yes. Question, Now, you reviewed with him the fact that he could come into the court and defend and take his chances of losing up to two hundred twenty-five dollars or perhaps more? Answer, No, I said it is according to what mood the judge is in. Question, He was risking money if he came to court, losing money? Answer, Yes. Question, Or in the alternative he could not appear which he would lose the bail. Answer, [fol. 403] Yes. Question, And you indicated in that instance the total fines would be one hundred forty dollars. Answer, Yes. Question, Leaving a balance of eighty-five dollars? Answer, Yes. Question, Now did he ask for his eighty-five dollars? Answer, No, it was the understanding that we would hold it. Question, Until when? Answer, Until, in other words, we were supposed to be taking him over for the two hundred some dollars and we would hold it for him until he came back or someone came in and demanded it on his behalf. Question, This is where I am

not following. You made it appear you were taking him over? Answer, Yes. Question, Purposely? Answer, Yes. Question, Why? Answer, Because we had heard this talk we were taking advantage of the Philadelphia motorists, but it was supposed to come from him, but he said, 'Now, I don't feel that way.' Question, Now, who knew besides you and Mrs. Naglee and the defendant that you had this eighty-five dollars? Answer, Nobody. Question, Well then, how would your keeping it prompt anybody to make a charge that you were taking him over? Answer, They thought he had paid more. Question, Paid more than what? Answer, The one hundred forty dollars, they thought he had paid, he had to pay two hundred some odd dollars. Question, If you made up a receipt for him of one hundred forty-five dollars, or two sets of receipts and gave him his change, and you have a copy of the receipt, and he has a copy of the receipt, don't you have your proof? Answer, Yes, I know it is wrong now. Question, It doesn't make any sense whatsoever keeping this money. Answer, I know. Question, The whole story doesn't make sense. Answer, That is the way it was. Question, Was this your idea? Answer, Yes, it was my idea. Question, When was this envelope put in the safe, Chief? Answer, Some time last [fol. 404] year, shortly after, within a week or two after that. Question, Were you to hold this forever? Answer, No. Question, As escrow funds? Answer, No. Question, When was he to get it back, when you had determined that the matter had died down sufficiently that you didn't think anyone would come in and make the charge? Answer Yes. Question, When do you think you would've made that determination? Answer, Maybe when Mr. Stanton went out of office. Question, You intended to hold this until he went out of office? Answer, Yes. Question, This goes back to March, 1960, that you took this money? Answer, Yes. Question, It's been sitting here over a year, year and a half. Answer, Yes. Question, Were you going to sue Stanton then for making false charges against you? Answer, He hasn't made any. Question, If he had, was that

your plans? Answer, No. Question, What would you do? Here is the money you have been holding it for a year? Answer, Principle involved. Question, When was the last time you talked to Mr. Scott? Answer, I guess, whenever he came down here that night, I can't say when it was, Monday night or something. Question, You say he is a friend of Stanton or Stanton is a friend of his? Answer, Stanton is a friend of his brother. Question, Couldn't you accomplish the same thing by telling him to tell Stanton how well he was treated? Answer, That's the way it was. Question, This was the drunkometer that made the determination he wasn't under the influence? Answer, I think the drunkometer or the doctor. Question, Who was the doctor. Answer, Doctor Cooperman. Question, Now, Ed, in relation to this business of posting bail, and getting receipts, and thereafter having the summonses altered for lesser offenses. Answer, Yes. Question, And recording of a fine less than the bail that was posted, how many times [fol. 405] has that been done? Answer, I'd say maybe four or five times. Question, Now in those cases, other than these two where the fine monies were less, what happened to the balance of the money? Answer, Well, I don't know if it was left. Question, Wasn't there another one in Philadelphia, where the amount of the fines were less than the bail, one that was taken care of? Answer, How long ago? Question, About a year. Answer, Scott, I don't recall."

The Court: All right, gentlemen, at this time we're going to adjourn for today. Instructions to the jury to return to 324, at quarter of ten tomorrow morning. Spectators remain seated until the jury leaves. You may leave.

(Whereupon court is adjourned for the day.)

May 7, 1963.

Camden, New Jersey.

The Court: Now, when we finished yesterday, we had Mr. Garifo reading and he had completed the reading of the alleged statement of one of the defendants, and now I think there are three more statements, is that correct?

Mr. Aiken: That's correct, Your Honor.

The Court: Are you ready to proceed with that part of the case?

Mr. Aiken: Yes.

The Court: Mr. Garifo, you have already been sworn.

[fol. 406] LAWRENCE GARIFO, having been previously sworn, testifies as follows:

Direct examination.

By Mr. Aiken:

Q. Mr. Garifo, I think you will have another statement of Edward J. Garrity, December 4th, 1962?

A. Yes sir.

Q. I believe that is similarly marked in the fashion that the court has deemed proper to read. I wonder if you would be kind enough to start reading these portions of Mr. Garrity's statement.

A. Yes sir.

"Interrogation commenced at 6:30 p. m., Tuesday, December 4th, 1962.

Edward J. Garrity, Chief of Police, Borough of Bellmawr, County of Camden, State of New Jersey, sworn:

By Mr. Kaplan: Question, Chief Garrity, of course the background of this is the idea that in Bellmawr there was a policy or practice of what is commonly known as fixing tickets which meant altering or changing of traffic tickets and I believe that you are familiar with the fact that that is something that has been suggested. Now, I would like to

go over these. Before we go on, I explain to you we are working on a Supreme Court order dated last June, directing originally the Attorney General to investigate the municipal court in Bellmawr and now it has been referred to the Prosecutor of Camden County for further investigation to supply facts that were not obtained by Mr. Rigg in his capacity as Deputy Attorney General concerning irregulari- [fol. 407] ties in the handling of motor vehicles. There are some questions we wanted to ask you and before I do, I want to advise you that anything you say must be voluntary, of your own free will and accord, without threats, promises or coercion. Anything you say may be used against you or any person at any subsequent proceeding in the courts of our state. You do have the privilege under our laws to refuse to make any disclosures which you feel may tend to incriminate you. Now, shall we proceed? Answer, Yes sir. Question, Do you understand your rights? Answer, Yes sir. Question, First, I'd like to go into some of these tickets one by one and ask you some questions. It may be that you will want to look at these tickets, Chief, and I have here a ticket issued out of the munincipal court of the Borough of Bellmawr in the nature of a complaint number 5453 and in the future as I go through these tickets, I will not indicate that they are from municipal court of the Borough of Bellmawr. We will assume they are and issued out of that court and directed to the person whose name I will mention, and for the charge I will mention. The questioning will involve apparent changes and the reasons why they were made. And, by whom they were made and under whose direction and that will be the general tone of this inquiry tonight. Answer, Yes sir. Question, Are you in a position to say that by reason of this so called policy or practice that only one person made these changes? Answer, Yes, one person made them. Question, One person made the changes and that came about by reason of a direction probably by you as Chief of Police in charge of the police? Answer, Yes. Question, In which the rule was laid down that no ticket could be changed or

altered without your direction and without your authority, is that so? Answer, Yes sir, it worked that way. Question, That is substantially or absolutely correct? Answer, Yes, [fol. 408] that is right. Question, So that in each of these cases, which I will show you, that practice was followed as far as you know? Answer, As far as I know, yes. Question, Now, these officers who made these original complaints on which summonses issued were they required to be interviewed and their consent obtained before you directed Mrs. Naglee to make these changes provided you agreed the change to be made? Answer, Yes sir. Question, All right, next is summons 5291, dated November 29, 1959 and the defendant, Phyllis M. Zippel. Are you familiar with that one? Answer, I don't know, she is a housewife or something. Question, You don't remember that one. Somehow I get the impression she may have been a nurse, however I don't know. Housewife is correct, that's correct, one hundred twenty-five pounds, female, and she has been charged originally with driving while under the influence of intoxicating liquors. Answer, Was she examined? Question, Yes, she was. She was charged originally with driving while under the influence of intoxicating beverages, and that was changed to section 97. Answer, I never spoke to her, Prosecutor. I don't recall the case. Question, You know who paid the doctor? Answer, No, I don't. Question, Is there any possibility that these changes were done behind your back where you didn't know of the changes, is that what you are suggesting? Answer, No, I'm not suggesting. Question, It could've happened, I suppose. Answer, It could've happened, but I'm not suggesting that. I am not passing the buck. Question, Well, there's no sense in being a hero about these things. Answer, I'm no hero, but what I can't remember— Question, This wasn't brought to your attention as far as you remember and you have a pretty good memory. Answer, It was brought to my attention, I don't know how, whether she was separated [fol. 409] from her husband, whether she was having troubles at home, I don't know whether she was working

to keep her children, I mean I'm trying to think what it was. Question, She lived around Fairview, 689 Morgan Avenue. That wouldn't mean anything to you? Answer, No, what does it say for occupation on there? Question, Housewife, going north on Kings Highway. Answer, I don't know whether she was working, I'm not sure. Question, You have no clear recollection? Answer, Not a clear recollection. Question, Do you have a dim recollection? Answer, Not even a dim one, no. Question, In other words, something could've happened that you don't know about? Answer, I know about it, you mean it was done without my knowledge or something? Question, Yes. Answer, No, I wouldn't say that. Question, Was this done with your knowledge? Answer, I know that it was done, but I don't know just how. Question, You know the change was made? Answer, Yes. Question, And you accept the responsibility of having authorized it to be made? Answer, Yes, I will accept the responsibility. Question, Are you doing that to protect the officer? Answer, No, I am no hero, but I mean I am truthful. Question, You don't know the nature of the doctor's reports? Answer, No, I don't. I mean I could probably talk it over with the officer and probably refresh my mind. Question, Now, why would it be in these last two cases that no disorderly conduct charges were placed against these people even though the drunken charges were sort of withdrawn and abandoned and the charge reduced to careless driving and so on, when you had instructions out to Mrs. Naglee to catch these things. Answer, No, I didn't have instructions. Question, I gathered earlier that every time one of these was downgraded from drunken driving to something lesser— Answer, I think it would depend [fol. 410] on the circumstances of the person. Question, All right, now, we go to summons 5311, dated January 10, 1960, the accused being William R. Snyder, the offense happening at 2:20 a. m., the defendant being a resident of Camden, a dock hand originally charged with drunken driving and apparently the charge was changed to section 97, which is reckless driving. The matter is shown to have

been disposed of on the back-up by Judge Teitelman on January 20th, 1960, which is ten days after the date of summons and complaint on a plea of guilty and he was fined ten dollars and costs of five dollars and Judge Teitelman signed it. That, I believe, is what you said was Judge Teitelman's signature? Answer, Yes. Question, Were you present in court? Answer, I can't recall. Question, Did this man appear in court? Answer, Well, the Judge—I don't know. Question, And Mrs. Naglee has acknowledged receipt of ten and five on a charge of careless driving. Answer, Yes. Question, Was this man out on bail? Answer, Prosecutor, I can't recall. Question, I am going to ask you the question, I am going to ask you to look at this summons and look at the alteration and I ask you whether you can tell me who made that? Answer, No, not positively. I couldn't. I had only be guessing if I told you. Question, Do you remember the case? Answer, No. Question, Anybody approach you on that case? Answer, No, I can't recall. I mean I can't recall any incident. Question, if you tell me, I believe you. Answer, I think the Judge, yes. Question, Who made the change, you don't know? Answer, I don't know, no. Question, The officer? Answer, It could be the officer or it could be Mrs. Naglee. I couldn't be sure if I tell you. Question, You know nothing about the doctor's report in this case? Answer, No, I don't. Question, You don't know whether he was examined for drunken driving? [fol. 411] Answer, No. Question, There are no records that you have that would refresh your memory if we ask you to look this thing up? Answer, No. Question, And nobody ever spoke to you about this case? Answer, I can't recall, no. Question, Of course I'm not suggesting anything to you, but doesn't that change resemble Mrs. Naglee's way of changing although she has a better handwriting on the receipt, on the change it's rather crudely. Answer, Yes, but the Judge made the change. Question, That may be, but when he heard the case it was 39:4-97. It wasn't drunken driving. Answer, You see, it was altered. Question, Yes. Answer, And I'm sure the judge looking at it,

sees it was altered. Question, That may not be. Maybe he wasn't looking for trouble. Answer, I don't recall the case. Question, You don't recall anything about that case? Answer, No. Question, Do you remember him being charged with disorderly conduct? Answer, No, I don't offhand. Question, Well, he was, and he plead guilty and he was fined a substantial amount plus costs. Answer, In court? Question, Yes. Well, I don't know whether he appeared in court or not. Answer, He appeared before the judge there. Question, He appeared here on a careless driving charge, and he may have forfeited the other. I don't know, it's possible. Answer, The other complaint would be backed up. You could tell if it was Mrs. Naglee's handwriting. Question, We'll get into that. I mean it does establish a pattern as you say you admit it was a pattern that you would charge him with disorderly conduct and got the money. Answer, Yes. Question, Next is 5366, dated February 7, 1960, 2:40 a. m., Herbert W. Brining, Audubon Park, New Jersey, truck driver charged with drunken driving and in the 'other violations' area, the bracket it appears as though there is an over-write over that. It appears as though the '50' that is there is an over-write '97'. [fol. 412] He was charged on the section and not by words, 39:4-50, but that was changed to 39:4-97, and the officer being Virtue. Answer, Yes. Question, And I ask you to examine this complaint and tell me whether or not you know who made this change. Answer, Well, I don't know. It looks like the officer and yet it could be Mrs. Naglee's. Question, And you know nothing about it? Answer, I didn't say that. Question, Do you know anything about this case? Answer, He is a truck driver? Question, Yes. Answer, The only thing I know I think he was going to lose his job. I think he has five or seven children. Question, Did you see the doctor's report? Answer, I don't recall whether I did, truthfully. Was there a doctor's report? Question, Yes. Answer, No, I don't recall whether I did or not. Question, Weren't you interested in the doctor's report, did you sanction this change? Answer, When I heard of the case,

yes. Question, Was that before it was changed or after it was changed? Answer, I don't recall but I went along with it, because I think he has five children or seven, I don't know which. Question, You didn't investigate the merits of the charge against him then, whether the doctor had said he was drunk or sober or anything of that sort? Answer, Truthfully— Question, Yes. Answer, No, I investigated the merits of the family. Question, What you thought were the merits of the case? Answer, Not the merits of the case, Prosecutor, the merits of his home. Question, Well, how did you find about this charge, did Virtue talk to you about the changing? Answer, He talked to me and explained I guess the guy came back to him and told him about the circumstances. Question, And this change was cleared through the violations bureau? Answer, Yes. Question, And not through court action? Answer, Yes, that's right. Question, And he was found guilty [fol. 413] of careless driving? Answer, Yes. Question, And fined ten dollars and five dollars costs? Answer, Yes. Question, Without court action? Answer, That's right. Question, Even though the original charge had been drunken driving? Answer, Yes. Question, Was there any bail in this case at all? Answer, I don't think so. I don't think he had any money, I don't recall if he was out of work at the time it happened or not. Question, Well, he wasn't a youngster? Answer, No, he had five or seven children. Question, This one is 5537, dated May 28, 1960, it happened at 1:55, I can't tell whether it's a. m. or p. m. Linwood Finney, 46 Walnut Street, Pennsgrove, New Jersey, truck driver, charged originally with driving while under the influence of intoxicating liquors. You could see '50' under '97' and the 97 being an over-write which changes the nature of the offense as charged from drunken driving to careless driving and the back-up shows that this was settled through the violations bureau as a careless driving charge. Answer, I think he was a colored truck driver, wasn't he? Question, Let's see. I don't think you show that on these things. Answer, Yes, I think so. Question, It

does? Answer, I believe so. Question, Let's see. There is sex, male, height, occupation, nothing to denote colored. Answer, I think he was a colored truck driver, he was a truck driver? Question, Yes, Pennsgrove and settled through the violations bureau for ten dollars and five dollars costs and that sum was received by Mrs. Naglee according to a receipt issued by her as of 6-20-60, which is quite a few weeks, several weeks after May 28th when he was charged with this thing. Was he charged with disorderly conduct, do you know? Answer, Yes. Question, Did he enter a plea of guilty? Answer, Same as the others. Question, Handled the same way, he did not appear in court? [fol. 414] Answer, Yes. Question, Brought the money to Mrs. Naglee? Answer, Yes. Question, Is that what happened in each case? Answer, Yes. Question, She got the money, parceled it out into well— Question, Paid the doctor. Answer, She didn't get all the money all the time, because if it was say at night time or something it was deposited with whoever the clerk was that was on the desk. Question, He turned it over to her the next morning? Answer, Yes. Question, Eventually she is the one that got it? Answer, Yes. Question, And she made the distribution, put the five dollars one place, and the other money another place? Answer, Yes. Question, What was the doctor's report in this case? Answer, I think it was a border line. Question, This was a border line case? Answer, Yes. Question, Well, I don't want to put words in your mouth, did you know that the charge was made or was to be made? Answer, Yes. Question, He came to you and got your— Answer, He came to me and explained the guy's circumstances to me. Question, And you authorized and directed the change? Answer, Yes. Question, Next is summons 5611, dated June 2nd, 1960, either 1:45 a. m. or p. m., John Gregal, Salem Pike, Clarksboro, New Jersey, a welder and charged originally, you could see the '50' with the section dealing with drunken driving, which was changed to '97' which was super-imposed on the '50' and obliterates it to some extent. The complaint was made by Officer Virtue,

and the matter was disposed of through the violations bureau by payment of a ten dollar fine and five dollars in costs on June 21st, 1960, and a receipt was given by Mrs. Naglee for that amount on a charge of careless driving. Did you know the change was made or was about to be made? Answer, Yes. Question, Done with your permission? Answer, Was he examined by a doctor? Question, I'll ask you [fol. 415] that. Answer, I don't recall, I'm trying to think. Question, Yes, John Gregal, he was examined on the same afternoon. Who paid the doctor in this case? Answer, Same way. Question, The same way. Was there a disorderly case involved? Answer, Yes. Question, There was a disorderly conduct charge? Answer, The Borough truck stopped and he bumped into it, and they got into an argument. Question, The money was deposited and the fine in this case was how much, fifty dollar fine and five dollars? Answer, Yes. Question, Of course, ten and five on the careless driving charge and the doctor was paid out of that money? Answer, Yes. Question, In cash, did the doctor have to come in and get his money or did you take it down to him. Answer, No, he always came down to the station. Question, Then you never went to him? Answer, No. Question, You wouldn't do that? Answer, No, he came in on other cases. Question, And at that time, you took care of him? Answer, Yes. Question, No question in your mind about that? Answer, No. Question, Were you there when he was paid at any time? Answer, It was always on hearing nights. Question, And you are there, and you talk to him and he gets paid and so forth? Answer, Yes. Question, Next is summons 5759, dated November 9th, 1960, 2:30 p. m., Robert A. Franklin, Barrington, New Jersey, machinist, I think apparently charged with driving while under the influence of liquor which was changed to '97' over '50' which of course makes careless driving with a further notation of 'driving in and out of traffic over line', and this matter was disposed of according to the summons. It may not have been disposed of this way, but the summons indicates it was disposed of November 26th, but the summons indi-

cates it was disposed of November 26th upon a plea of guilty and the amount of the fine was ten dollars and five [fol. 416] dollars cost and the receipt signed by Mrs. Naglee for the fifteen dollars indicated that the charge was careless driving. Answer, He had come from the navy yard. He had his tooth extracted. I run a drunkometer on him, he wasn't examined by a doctor, I don't think. Question, Yes he was. Answer, Was he? Question, Yes he was. Answer, Franklin? Question, Franklin. He was R. A. Franklin. He was on November 9th. Answer, I don't recall the doctor coming in. Question, The doctor got paid twenty dollars for nothing? Who made the change? Are you familiar with this? Answer, Yes, I am. Question, You are familiar with this? Answer, Yes. As I started to tell you, this fellow came in from the navy yard. He had a tooth pulled, they had given him some stuff and I called the naval base to verify that he just had had the tooth pulled and the doctor had given him this shot of stuff and told him not to drive. Question, Not to drive? Answer, Yes, and he drove. Question, Was it narcotic? Answer, Some type of narcotic, yes. I spoke to the doctor over there. Question, What did the doctor's report indicate in this case, do you remember, was he examined, you don't remember that? Answer, I didn't remember him being examined by the doctor, because I run a drunkometer on him and we get less than 10 hundreds of one percent. Question, Do you have the recollection of your drunkometer test? Answer, No, they would be attached to the report. Question, They would be? Answer, Yes. Question, Why wouldn't they be? Answer, I said we don't have them. I am just trying to recall the case. Question, Did we discuss as to who made the change? Answer, The change was made right that afternoon. Question, You knew about it? Answer, Yes, I knew about it. Question, You authorized or instructed or went along with the deal? Answer, I was right there, because I am the one that called [fol. 417] the hospital. Question, it was your idea? Answer, I called the hospital. Question, You instructed the change

to be made? Answer, Yes, when we run a drunkometer on him, I am trying to think. He was eight or nine hundreds, that is what made us call the doctor over there and the doctor said I forget the narcotic drugs that he had given him, and he told him he shouldn't drive a vehicle. Question, Now, Robert Franklin, in this case, must have been in some kind of a collision? Answer, Yes. Question, Now, was he charged with disorderly conduct? Answer, That is why I didn't think he had a doctor, because he didn't want to blow the balloon up. Question, Was he charged with disorderly conduct? Answer, Yes, he gave us a lot of trouble in the station. Question, What way? Answer, Not wanting to blow the balloon and saying we were trying to frame him and being drunk and all of that stuff and call up the hospital. Question, Eventually he plead guilty to a disorderly conduct charge and fined one hundred dollars and five dollars costs. Answer, He admitted the next day he was nasty to us in his talk. Question, And also paid fifteen dollars for careless? Answer, Yes. Question, And this fellow is apparently the same pattern where people have been charged with drunken driving and they will be changed if they plead guilty to a careless driving charge and disorderly conduct. Answer, is this fellow charged the same way? Question, Well, if they are charged with drunken driving and it is dissolved into two charges, careless driving and they are charged with disorderly— Answer, Do you mean if we ask them if they wanted it that way? Question, Regardless of the condition, there was a follow up, not only a charge of careless driving but also a disorderly conduct charge. Answer, Yes, if it warrants. Question, You didn't think this [fol. 418] man was drunk. Answer, when I did the drunkometer— Question, Yet you followed the same procedure? Answer, He gave us a lot of trouble. Question, This was the disorderly conduct part, this case was a little different. Answer, he was a little belligerent at the station. Question, Now, this is 5157, dated October 4, 1959, and the defendant is Robert T. Killian, 2639 Emerald Street, Philadelphia, truck driver and apparently was charged with drunken

driving by reference to the statute section and that which was changed to 85. This was disposed of according to the memorandum on the back of this on the court action on October 14th, 1959, by a plea of guilty where he was fined five dollars and costs five dollars, signed S. Teitelman, is that the judge's signature? Answer, No. Question, Now, was he charged with disorderly conduct, he wasn't there was a hearing on 10-14-59, which is the same day which appears on court action. Answer, I don't know too much about that case, Prosecutor. I can't recall. Question, And fined fifty dollars and five dollars in costs? Answer, Yes. Question, Would you know whether there was a court appearance in this case? Answer, I believe so. Question, In other words, this is some indication— Answer, I can't give you much detail on that case, when was that? Question, October 4, 1959, this goes back. Answer, Yes. Question, This doesn't ring too much of a bell? Answer, No. Question, Well now, in this case there was put up for this defendant who was a resident of Philadelphia in the amount of two hundred fifty dollars and who is James Lee? Answer, He is a dispatcher. Question, Police Officer and of course, authorized to accept bail? Answer, Yes. Question, And the bail is furnished by A. DelRossi or a Mr. DelRossi, and for Bob Killian on driving under the influence, I suppose it is two hundred fifty dollars for his appearance. What happened to that bail money, do you know? Answer, [fol. 419] No, I don't know offhand. I can't even recall the case is as I told you that they want. Question, He was going west on Browning Road, that doesn't say too much. Now your department retains all the receipts for this two hundred fifty dollars? Answer, Yes. Question, Are there four copies or three copies? Answer, Three. Question, We still have the three. Answer, Yes. Question, When I indicated that Del Rossi never got a copy— Answer, Well, he had to get a copy. Question, But if Del Rossi came back, is there anything marked on his notes other than that? Answer, I truthfully don't remember that. I don't remember that case here. Question, Do you maintain a bail book?

Answer, Let me see it? Question, Do you recall a bail book of any kind where you record cash bail items or anything like that? Answer, I think Mrs. Naglee does. This must have been given out and came back, that is how we got the white copy back. Question, Indicating what? Answer, Indicating that this DelRossi, I guess, got the money back or something. I truthfully can't explain it right now, I mean to get this back and they are stapled together, because they were torn off and in other words— Question, That doesn't always follow? Answer, Prosecutor, this one has been folded and the rest of these you can see are plain. This one has come back off of DelRossi. Question, Or something, but it doesn't dispose completely of the question. You have no other record, no other receipts given or taken? Answer, Maybe Mrs. Naglee could enlighten you. I don't know, but that white receipt was out, it's been folded separate than the other ones. Question, I asked you whether you had authorized that change and you did say yes, or didn't you. I forget. Answer, Well, I said this one didn't ring a bell with me. Question, You have no idea who made this change? Answer, I'm sure I didn't object to it. I mean it doesn't stand out."

[fol. 420] Mr. Aiken: I think that is the end of Chief Garrity. I wonder if you would go on to Mrs. Naglee's statement given to Mr. Kaplan.

The Witness: Yes, sir.

"Helen B. Naglee, sworn, by Mr. Kaplan: Question, Now, Mrs. Naglee, you are connected with the municipal court in Bellmawr? Answer, Yes. Question, In what capacity? Answer, Court clerk and Borough violations clerk. Question, That work deals with police work involving traffic cases, matters of that sort. Answer, That's right. Question, Mrs. Naglee, to get this matter off the ground, I would like to question you about certain summonses and I want to inform you I am the Assistant Prosecutor and that this office is working under a Supreme Court order dated last June, directing originally the Attorney General of New Jersey to investigate the municipal court of Bellmawr with

reference to irregularities in the handling of motor vehicle matters. And, the Supreme Court has further instructed the Attorney General to submit the case to the Prosecutor of Camden County for further investigation. I want to ask you some questions, but before I do, I want to advise you anything you say must be voluntary and of your own free will and accord, without any threats, promises or coercion, and anything you say may be used against you or against any other person in any subsequent actions, and you have the privilege of refusing to make any disclosures which you feel may incriminate you. Do you understand that? Answer, Yes sir. Question, Are you willing to proceed? Answer, Yes. Question, How long have you been a violations clerk in Bellmawr? Answer, I think I went in in 1947, I think it was 1947. Question, You have been a court clerk for some length of time? Answer, Yes sir. [fol. 421] Question, What are the duties of the violations clerk? Answer, That is for people who have violations that are not serious, doesn't have to come before the judge. They would sign a waiver. Question, They are matters where you might dispose of them on payment of the proper amount? Answer, Minor violations. Question, What is the duty of the court clerk? Answer, As court clerk, I prepare the cases for the judge, like disorderly cases and sit with him in court on court nights. Question, And you keep a docket of the cases? Answer, Yes. Question, And handle the monies? Answer, Yes. Question, You act in both capacities? Answer, Yes. Question, And issue receipts where it is necessary? Answer, Yes. Question, And you make returns where the matters are disposed of and there is excess money involved. Answer, What do you mean? Question, If there are any monies that are surplus, after a matter is disposed of, for instance if the fine is less than the bail? Answer, Yes, I return the money. Question, To the person entitled to receive it? Answer, Yes. Question, Mrs. Naglee, you are probably aware of the fact that this investigation stems from reports and later evidence of the fact that motor vehicle summonses have been altered and changed in some

cases. Answer, Yes. Question, Do you want to say generally that was a fact, there have been cases where tickets have been changed or fixed, whatever you want to call it? Answer, I would rather say altered. Question, In certain instances? Answer, Yes. Question, And that has been a practice for some time in Bellmawr? Answer, It wasn't —I don't know how to put it. It wasn't the practice, it was a case where someone had gone to the chief or something, it wasn't all cases. Question, Not all the cases? Answer, If someone had a hardship case, he went to the arresting officer and they in turn went to the chief and he would try [fol. 422] to give the person a break. Question, If the chief or the arresting officer or possibly you were contacted with a request to change, alter it, and you felt like doing it, it could be done if the chief would direct you to do it, but the chief always had the consent of the arresting officer? Answer, Yes, I never did one of my own. Question, There was an arrangement? Answer, The arresting officer usually went to the chief. Question, But it was known to the chief. Answer, It was really mostly in serious requests or where the point system was going to take the man's license. Question, Next is number 5291, November 29, 1959, Phyllis M. Zippel, and in the 'other violations' block there now appears 'RS 39:4-97' where the '97' appears, there has been an erasure. I have no way of telling what was under there, we do know and have a record that Phyllis Zippel was examined on November 29th for drunken driving. We have that information, and you won't know what that report shows, of course. Answer, No. Question, This was disposed of through a violations bureau? Answer, That's correct. Question, And I'm going to ask you this question. Answer, I had nothing to do with this. It's signed E. G. The chief collected the fine. Question, How do you know? Answer, E. G., I had nothing to do with it. I went in the next morning and he said Helen— Question, He took care of all the money? Answer, That's correct. Question, In this case, there was no disorderly conduct charge, just the fifteen dollars? Answer, No. Question, Next is 5311,

William R. Snyder, dated January 10, 1960, again he was charged with careless driving. Our records indicate he was charged with drunken driving, and in the summons the '50' appears very clearly under the '97' written over it. The original charge was drunken driving, changed to careless driving. I show you this and ask you if you can tell me who [fol. 423] made the change. Answer, That is the judge's writing. The judge heard it, but I changed it. That is my '97'. Question, And he heard it? Answer, He heard it as a careless driving. Question, As careless driving charge? Answer, Yes, was he examined? Question, Our records indicate a plea of guilty and a fine of one hundred five dollars costs for disorderly conduct, William R. Snyder on 1-20-60. Answer, He was arrested on the 10th, one hundred five dollars. Question, And this one hundred five here— Answer, And one hundred five dollars on the disorderly and I wouldn't doubt but it looks as if the defendant appeared. Question, You think the defendant appeared? Answer, I couldn't tell you, you could see the hearing date in your traffic docket. Question, What would that indicate? Answer, Well, whether there was a hearing or whether it was taken care of in violations bureau. We have it marked hearing, I couldn't swear to it. It is marked hearing. Question, Then it would appear that this matter was disposed of at a hearing? Answer, That is the way it looks in the docket. I can't recollect. Question, Do you have many disorderly conduct cases in your court, during the course of the year? Answer, Do we have many? Question, Yes, do you have many. Answer, Well, they run in cycles. Most of the disorderlies— Question, But you do have them, they are not unknown to your court. Answer, no. Question, And when these disorderly conduct cases come up from time to time, where they have no reference at all to a motor vehicle case, such as we have been discussing, what does the judge usually fine them? Answer, it depends how serious it is, most of our cases are at Dick Lee's and 'unable to give a good account', something like that. They

range from twenty-five to one hundred dollars. At Dick Lee's we have habitual people come back there and they [fol. 424] drink. It's usually one hundred dollars or so, because he's trying to break it up. Question, In other words these disorderly conduct fines in these cases are not out of line? Answer, No. Question, Are they lower? Answer, Fifty dollars, one hundred dollars, some of these are legitimate. Question, They average out the same as the other cases? Answer, Yes. Question, Where automobile violations are not involved? Answer, That is a set fine. Question, You said you made the alterations here by the judge, and you don't know whether. Answer, No. Question, Next is summons 5366, Herbert W. Brining, charged with drunken driving. You could see the '50' over which has been superimposed '97' which is careless driving. And disposed of in the violations bureau on a careless driving charge, fine of ten and five, I ask you to look at the face of the complaint and let me know whether or not you know who made that alteration. Answer, I did. Question, That was changed from drunken driving to careless driving? Answer, I did. Question, Next is 5537, dated May 28, 1960, Linwood Finney again '97' seems to have been written over '50' when the drunken driving statute is inserted and added was 'driving too fast for conditions' and this was disposed of in the violations bureau as ten and five on a charge of careless driving. Our records indicate that Finney was examined for drunken driving and I ask you to look at this complaint and any other parts that you wish and let me know if you can who made that alteration? Answer, I did. Question, You made the alteration? Answer, Yes. Question, And you received the monies? Answer, I did. Question, And so on? Answer, Yes. Question, I call to your attention the fact that the defendant forfeited fifty-five dollars bail for disorderly conduct. The record indicates that there was fifty-five dollars deposited, which was forfeited by this fellow, [fol. 425] Finney. Answer, Yes. Question, Would you know what that fifty-five dollars was put up for? Answer, Well, I guess that's all that the chief accepted from him, I

don't know. Question, You forfeited it? Answer, Unless he told them if you go to court there will be a fifty-five dollar, and fifteen dollar and whatever that was, and he didn't show up. It went in as a forfeit. Question,—

Mr. Corbin: You want to change your docket there on 6-22-60.

Question, How was the fifty-five dollars applied? Answer, Failed to appear and he had a receipt on it, and forfeited fifty-five dollars. That would be in there. Question, What happened to the fifty-five dollars? Answer, It went to the Borough. When it is forfeited, it goes to the Borough. Question, And this was bail for appearance on the drunken driving charge? Answer, He was told his fine would probably be fifty-five dollars and accepted it as bail and then he just forfeited and all disorderlies go to the Borough. Question, But the bail was for appearance for the drunken driving charge? Answer, No, the bail was for appearance in the disorderly. Question, Do you know how much with this case? Answer, No, I don't. Question, No sense of me trying to draw at lot of conclusions and pictures,— Answer, What was on that? That was changed to careless? Question, Yes, careless driving. Answer, Whoever took the bail must have took for that and the doctor, if he was examined by the doctor, and broke it down for me. Question, Next is 5611, dated June 2nd, 1960, John Gregal and again '97' is written over '50' which is the drunken driving statute and the comment 'too fast for conditions' and disposed of through the violations bureau and you indicated a fine of ten and five for careless driving, and fifty and five for disorderly conduct, do you remember anything? An-[fol. 426] swer, It just follows right here in the book. Question, Do you remember anything particularly about it? Answer, No, I do not. Question, 5759, dated November 9, 1960, Robert A. Franklin, and again apparently a change from '50' to '97' and the addition of 'driving in and out of traffic over line', a court action, plea of guilty, ten and five, signed S. Teitelman, and your receipt indicates receiving ten and five and I ask you whether or not that is the signa-

ture of Judge Teitelman. Answer, No it is not. Question, You wrote that? Answer, Yes. Question, On the front of the complaint, there is some changes. Would you know who made those, Mrs. Naglee? Answer, I did. Question, You made them? Answer, Yes. Question, And this again was one of those cases? Answer, That's right. Question, Number 5157, dated October 4, 1959, Robert T. Killian, again it is apparent that '50' has been here and written over '85' in black ink. Incidentally and disposed of by court action, signed S. Teitelman, and I ask you whether that is his signature or whether you signed it. Answer, I signed it. Question, He knew nothing about this, in other words, he didn't know anything about it? Answer, No, he didn't know anything about it. Question, Do you know who made the change? Answer, I made the change. Question, From drunken driving to careless driving? Answer, No, passing on the shoulder. Question, In this case, there was two hundred fifty dollars bail put up by a A. DelRossi, conditioned on the appearance of the defendant in court, on the 21st of October and this matter was disposed of on October 14th which is a week before the appearance date. Do you have a record of having received the two hundred fifty dollars or any record of that bail transaction? Answer, No, I don't. It was paid to James Lee, he was one of our dispatchers, I don't know, I didn't—I must have received it the same as I [fol. 427] the others. Question, What did you do with the cash bail when you received it? Answer, Cash bail? Question, Yes, you deposited it? Answer, I applied it. Question, Well, I mean you have no recollection of this and there is no record in your books of whether DelRossi got his money or not. Answer, He evidently did, or you wouldn't have the white slip. See, when they get it back themselves, like someone puts it up, they turn in that white slip and they get their money back. Question, Don't you ever get receipts or insist on receipts when you pay money back from the individual instead of accepting this back, you could say 'received from the Borough of Bellmawr.' Answer, He had his proof that we had it, the proof he paid the two hundred fifty dollars. Question, You de-

pend on the fact you gave him a licking in court in case he claims he didn't get it back. Answer, We don't know. Question, Doesn't the administrative office regulate this procedure for money returned? Answer, Where I return bail, I return it in check. I have a municipal court account and you don't get that cash anymore. You get it back by check. Question, Killian, you did make the change? Answer, Yes I did.

The Witness: That concludes Mrs. Naglee's statement.

Mr. Aiken: I wonder if Your Honor wants to give us a recess.

The Court: I think perhaps the jury will need a very short recess. Again you don't have to crawl up and down those stairs, if you prefer you can remain out here in the corridor.

[fol. 428] (A short recess is taken.)

Mr. Aiken: Mr. Garifo, I think we're on the last one and that is Edward Virtue. Will you relate to the judge and the jury the portion that has been marked in his statement to Mr. Kaplan, dated December 7, 1962.

The Witness: Yes.

"Edward Virtue, sworn, by Mr. Kaplan: Question, Now before we begin, I want to advise you anything you say must be voluntary, of your own free will and accord, without any threats, promises or coercion, and anything you say may be used against you or against any person in any subsequent proceeding in the courts of our state. You do have the privilege under our laws to refuse to make any disclosures which you feel may tend to incriminate you. Do you understand that? Answer, Yes. Question, You further understand this investigation was first undertaken by the Attorney General by Budd Rigg and by direction of the Supreme Court it has been handed down to us to possibly fill in some gaps and that is why we are here. Answer, That is correct. Question, Number 5291, November 29, 1959, 3 a. m., Phyllis M. Zippel, housewife, the word 'operator' which is printed as part of the ticket is circled, charge

originally was 39:4-50, your drunken driving statute, and that has been erased and changed to, and when I say 'that you know', I mean '50' has been erased and inserted is 97, which is the careless driving violation and the matter was disposed of in the violations bureau, on a careless driving charge, and a conviction and a fine of ten dollars and costs of five dollars, and I ask you whether or not you made that erasure and that new insertion. Answer, That is not my handwriting, that is not my handwriting. Question, Are [fol. 429] you familiar with the case? Answer, Vaguely, yes sir. Question, Do you know whether Mrs. Zippel was examined for drunken driving. I tell you she was, do you remember the nature of the report made? Answer, I believe she was found to be under the influence. Question, Found what? Answer, Found to be under the influence if she was examined. Question, The doctor pronounced her unfit to drive, in other words. Answer, Yes. Question, And were you asked if you would consent to this change, do you remember? Answer, I believe it was a hardship case. Question, I would like to get this clear, do you recall being asked to make the change and give your consent? Answer, I had to be consulted, yes. Question, Do you remember who asked you? Answer, No sir, I do not. Question, Now, the receipt shows a conviction on a careless driving charge and you gave your consent because it was a hardship case? Answer, Yes, I believe it was. Question, And this is in line with the policy or practice that developed with tickets other than drunken driving. You did whatever you could to bring them into reasonable bounds according to your judgment? Answer, Yes, may I see that summons sir? Question, Was this change made the same night she was arrested? Answer, I couldn't answer that. Question, Do you remember any details about this case? Answer, No. Question, Now, number 5157, October 4, 1959, 7:25 p. m., Robert T. Killian, a Philadelphia truck driver charged with drunken driving under section 50, originally and that was overwritten with '85' passing car on shoulder, disposed of by a court action on 10-14-59 although originally returnable

according to the complaint on October 21st, 1959, a week earlier through court action, and there is a signature S. Teitelman. Disposition by a plea of guilty, a fine of five dollars, costs of five dollars, and I ask you whether or not [fol. 430] the alteration or change which is shown on the front of that complaint is in your handwriting. Answer, No sir. Question, Is that Judge Teitelman's handwriting, do you know? Answer, No sir. Question, It's not his writing? Answer, No. Question, Now, do you recall a disorderly conduct charge against Robert Killian as of the same date on which you are the complainant and he plead guilty on the 14th which is the same day he plead guilty to passing car on shoulder, and he was fined fifty dollars and costs of five dollars. Do you remember that? Answer, No sir, was this in 1959? Question, 1959. Answer, No. Question, Are you familiar with the fact that bail, cash bail, was put up for Killian on the same night that he was arrested by one Del Rossi for his appearance on October 21st, do you recall the bail being put up? Answer, No sir. Once we make an arrest and make the charge, we leave them in the station and if they don't make bail we commit them to the county jail. Question, You don't know anything about the bail being placed? Answer, No sir. Question, Who was DelRossi, do you know? Answer, DelRossi? Question, When you arrest one of these drunken drivers, do you stay with them until he is disposed of by bail? Answer, We have him examined, make our charges, and we will leave him in charge with the man on the desk and we go about our business. Question, You don't stay with him? Answer, No sir, sometimes we do and sometimes we do not. Question, Do you remember being with him when the bail was furnished that night? Answer, No sir. Question, Do you recall examining the doctor's report in this case as to drunkenness? Answer, No sir. Question, But you did consent to that change. Answer, Yes sir. Question, To whom, do you remember? Answer, No sir. Question, Now, this disorderly conduct charge, do you recall why you placed a disorderly con- [fol.431] duct charge against him? Answer, No sir. Ques-

tion, Did you testify against him at a hearing for disorderly conduct? Answer, If there was a court action on it, yes sir. Question, Do you recall testifying against him, he was a truck driver. Answer, Evidently, that is why I consented to the change. That would've meant his livelihood. Question, In other words you consented to a downgrade so to speak of the drunken driving complaint to disorderly conduct and careless driving? Answer, Yes, it's possible the man was disorderly with me. Question, But you don't remember? Answer, No, I do not. Question, Was it the usual occurrence or not uncommon if you felt it was a hardship case, you would dispose of it by consenting to a downgrade so the charges became not drunken driving, but careless driving and disorderly conduct? Answer, Where a person was disorderly with me, yes. Question, But not where he wasn't disorderly? Answer, No sir. Question, You're sure of that? Answer, I would say no sir. Question, Do you remember signing the complaint in this case? Answer, I signed my complaints, I will say that. Question, Do you think someone might have signed your name to these complaints? Answer, I don't think so. Question, And you insist that anytime you downgraded a drunken driving case, there was a legitimate reason for calling the person disorderly even though he was a quiet drunk and just driving in zig zag fashion. Answer, I have very seldom saw a man locked up for drunken driving that was very quiet, especially when he brought in for examination. Question, Let's say someone's conduct did not reach the point of being disorderly. Answer, I can't say I can remember the case, no sir. Question, 5759, November 9, 1960, 2:30 p. m., Robert A. Franklin, charged originally with drunken driving, and changed to careless driving with [fol. 432] almost the entire part of the original charge obliterated and written over the careless driving section of the statute 'driving in and out of traffic over line'. You made the complaint, disposed of by was termed 'court action' November 16, 1960, although the matter wasn't actually returnable until November 30, 1960, by a plea of guilty

and a ten dollar fine and five dollar costs, signed 'S. Teitelman' although there is some question as to whether or not the judge did sign this. And, it shows a conviction for careless driving and a receipt of ten and five, by Mrs. Naglee, and I ask you whether or not you made that alteration or change on that ticket. Answer, I know the case, but I didn't change it. Question, Tell us what you know about it. Answer, Mr. Franklin was involved in an accident, I brought Mr. Franklin into headquarters and charged him with drunken driving. Question, Was he drunk? Answer, He appeared to be drunk, yes. Question, What did the report show when it came in? Answer, I believe the report also said he appeared to be under the influence of intoxicating liquor. Wait a minute— Question, Does this explanation have to do with the fact he wasn't drunk? Answer, He was a drunkometer case, if my recollection serves me. They have the report there. Question, I didn't ask you that. Answer, I'm trying to answer the best I can, but I had so many cases. Question, I'm not pushing you. You thought he was drunk? Answer, I believe Mr. Franklin was brought in and I believed him to under the influence. Question, Had you made a complaint? Answer, I made a complaint and put him on the drunkometer. Question, Yes? Answer, I believe he had a reading of eight hundreds or nine hundreds of one per cent of blood alcohol. Mr. Franklin was a retired naval officer, and when I told him he was under the influence, he became abusive and said [fol. 433] he wasn't drunk. We checked out the navy yard, he stated he just come down from the navy yard and he just had a tooth pulled and had stopped and had a couple. Question, A couple of drinks? Answer, Yes, and I called the navy yard and talked to the surgeons who worked on him and he stated he had a tooth pulled at the time and he had a lot of stitching and he gave him some kind of pills or some kind of medicine and he told him not to touch any alcohol. Question, Did he take the pills? Answer, Yes, I believe he took some right there. Question, Do you know that? Answer, Yes, he gave him some right there before he left to

kill the pain. Question, Who did? Answer, The doctor. Question, Doctor Cooperman? Answer, No, I examined him. I am a drunkometer operator. Question, Did the doctor give him those pills in your presence? Answer, No, I called the doctor and the following day he stated he had given him pills, yes sir. Question, So you changed the charge? Answer, Yes. Question, No other consideration was involved except he had taken pills and that might have changed his condition? Answer, Yes, the alcohol didn't show enough to bring him under. Question, What happened to him? Answer, A friend took him home. Question, What happened to his car? Answer, Left at the police station, no, it was towed in because it was involved in an accident. Question, Did you sign a disorderly conduct charge against this man? Answer, Yes. Question, At whose request? Answer, Mine. Question, Just yours? Answer, Yes. Question, As I understand it, the same night? Answer, Yes sir. Question, And didn't he have a hearing on the matter of disorderly conduct? Answer, No sir, I believe he forfeited his bail. Question, How much bail did he put up? Answer, I don't know, I don't know sir. Question, Did you testify, were you in court when he was tried on the [fol. 434] careless driving charge? Answer, I don't know whether he came to court or paid it sir. I remember he paid for the damages to the car that he struck. Question, Were you in court when he plead guilty, if he did, to the disorderly conduct charge? Answer, I don't know whether he plead guilty in court or plead guilty and paid the fine, sir. Question, Didn't you tell me you were at every court session? Answer, Yes. Question, How many court sessions are there a week? Answer, One a week. Question, No more than that? Answer, No sir, unless there is something special. Question, When you schedule a court appearance it is for that one night that the judge will sit, if you book him for a court appearance at a certain time? Answer, Court night is Wednesday night. Question, And you book him for a court night, you don't have them there on a night when there is no court. Answer, No sir. Ques-

tion, And you schedule him for November 30, and the thing was disposed of on November 26th. How do you account for that? Answer, The only way I can account for it, he paid it through the violations bureau rather than come to court. Question, How do you account for the fact that he was found guilty of disorderly conduct on the 26th which wasn't a court night. Suppose I tell you it is pretty well established it was a practice in Bellmawr in these drunken driving cases where because they were sorry for people and all that sort of thing, and depending on the financial ability of the individual he was fined varying amounts on the disorderly conduct charges and fifteen dollars on the careless driving charges. Are you familiar with that practice or aren't you, or are you familiar with the fact that practice existed at one time during the time we are talking about? Answer, Would you mind rephrasing that? Question, In going through these complaints, and in going through the [fol. 435] dockets of Bellmawr Municipal Court, there appears to be a pattern that in drunken driving charges have been changed to a lesser offense on occasion, and where the change is made almost invariably the change is from drunken driving to careless driving under 97, and a disorderly conduct charge and the careless driving charge is disposed of for fifteen dollars while the disorderly conduct charge is disposed of by a guilty plea where the amount depends on the financial circumstances of the accused, and that seems to be the pattern followed in the Borough. It may not have applied to everybody, but may only have applied to hardship cases, but isn't it a fact that practice existed and you knew about it? Answer, Yes sir. Question, We don't have to quibble about it, it happened and it was part of something down there. Answer, Yes sir. Question, In Franklin's case, it was done by somebody and you may have had a part in it but you think in your own mind you can justify it. Answer, Yes sir. Question, Number 5611, John Gregal, charged originally with drunken driving, changed to careless driving by writing over '50' and putting in '97' and disposed of in the violations bureau for ten and five which was received by Mrs. Naglee on a care-

less driving charge and I ask you whether or not you made that alteration? Answer, That is my writing. Question, Do you recall whether there was a disorderly conduct charge in this case of Gregal's? Answer, No sir, I do not. Question, There is a record of Gregal having been charged with disorderly conduct that was disposed of on a guilty plea with a fine of fifty dollars and costs of five dollars. Do you recall that at all whether you testified or not, now that was disposed of on a court night although the other offenses are run through the violations bureau. Answer, No sir. Question, Number 5537, May 28, 1960, Linwood Finney, [fol. 436] truck driver, Pennsgrove, charged with drunken driving under Section 50 and written over the '50' is '97' and in the careless driving box, there is a tick to indicate the charge of careless driving you made the complaint and Badini and Bagroski accompanied you. The charge was changed to careless driving, and disposed of by court action on 6-20-60. It wasn't a court appearance. Court appearance is down as June 15th, 1960, and it shows that went through the violations bureau and that money was received ten and five, careless driving. Answer, No sir, that's not my writing. Question, Now, in the Finney case, you charged Finney with disorderly conduct and he forfeited fifty dollars bail for non-appearance. Do you recall the circumstances? Answer, If you are asking me about one disorderly conduct charge, I think if you will check you will find out I have had a lot of disorderly arrests. I can remember a time at Dick Lee's when we locked up ten or fifteen a night. You are asking me about one disorderly charge. Where is the needle in the haystack. I don't remember. Question, Number 5366, February 7, 1960, 2:40 a. m., Herbert W. Brining, truck driver, originally charged with drunken driving on the complaint and over the '50' is written '97' which is a careless driving disposed of in the violations bureau for ten and five for careless driving and I ask you if you made the change. Answer, No sir. Question, But you remember the case? Answer, Yes, I remember the case. Question, Number 5311, January 10, 1960, William R. Snyder, Cam-

den, a deck hand originally charged under section 50, drunken driving, changed to '97' careless driving charge disposed of according to the record on the back of this complaint on January 20, 1960, plea of guilty, fined ten and five, and signed 'Saul Teitelman' and the receipt shows receipt of ten and five by Mrs. Naglee on careless driving charge [fol. 437] and I ask you whether or not you made that change. Answer, No sir. Question, Now, do you recognize that as being Judge Teitelman's signature, if you know it? Answer, I would say that is the judge's signature. Question, That is not your change? Answer, No sir. Question, Are you aware of the fact you charged Snyder with disorderly conduct and that matter was disposed of on January 10, on a plea of guilty, and a fine of one hundred dollars and five dollars costs? Answer, He was also charged with disorderly. Question, Snyder? Answer, It must have went into court. Question, He did? Answer, Yes sir. Question, And actually tried and defended? Answer, To the best of my recollection. Question, He plead guilty? Answer, To the best of my recollection I would rather say I don't remember on that one."

The Witness: That concludes the statement of Mr. Virtue.

Mr. Aiken: Thank you, Mr. Garifo.

The Court: Now, for the purpose again of the record, I think all of these statements that have been read should receive a marking for identification, not evidence. Identification. Supposing we take the last marking. S-27 through 30 for identification.

(The aforementioned articles received and marked in Exhibits S-27 through S-30 for identification.)

The Court: Is there anything further for Mr. Garifo?

Mr. Aiken: No.

[fol. 438] The Court: All right, Mr. Garifo, you stand excused. Thank you for your services.

(Witness excused.)

JOHN F. CORBIN, having been previously sworn, testifies as follows:

Direct examination.

By Mr. Aiken:

Q. Mr. Corbin, where do you live?

A. I live in Medford Lakes, New Jersey.

Q. And what is your occupational profession?

A. I am a detective in the New Jersey State Police.

Q. And how long have you been connected with the New Jersey State Police?

A. Fifteen years.

Q. And how long have you been a detective?

A. Six years.

Q. Now, have you had some connection with the matter here in court now?

A. Yes sir, I have.

Q. When did you first become connected with that matter in any way, do you recall?

A. Yes, I was working with Deputy Attorney General Budd Rigg on another matter at the time, June of 1961, and he was assigned to this investigation by the Attorney General and he needed assistance, and I assisted him in this investigation, starting from that point on.

[fol. 439] Q. Now, in connection with your assistance to Mr. Rigg, did you have occasion to go down to the Borough of Bellmawr, specifically the police headquarters there?

A. Yes sir.

Q. And very generally, what did you have to do down there, what did you do down there?

A. Well, I recall I had accompanied Mr. Rigg down there about the middle of July, after he was given his assignment, 1961, and we had an interview with Chief Garrity in his office and Mr. Rigg informed him of the investigation, the Supreme Court order that he was operating under, and if

he was going to conduct an investigation and he asked Mr. Garrity a few questions.

Q. Now, can you recall what the questions were that Mr. Rigg asked Chief Garrity?

Mr. Malandra: I object to any conversations between this witness and Chief Garrity not in the presence of the other two defendants.

The Court: What are we getting into now? I mean what is the purpose of this question?

Mr. Aiken: Well, Your Honor, the witness I believe will testify to certain conversations between himself or between Mr. Rigg and Chief Garrity in his presence.

The Court: Are they already in the statements that have been read?

Mr. Aiken: Well, there may be similarities but there will also be different statements, Your Honor.

[fol. 440] The Court: Were these taken down stenographically?

The Witness: No, Your Honor, they were just in the form of conversations between the defendants.

The Court: All right, then I'll permit it but I will first instruct the jury. The law is very clear on the business of statements given by joint defendants in a conspiracy case. Perhaps the easiest way to explain it to you is to take this individual case and apply the principles of law to it. In this case, of course, three people were indicted, are charged with the crime of conspiracy. Obviously, the Attorney General's office was sent in to investigate it long after the conspiracy had been completed. And, that, of course, is the crux of the whole of this legal explanation.

Mr. Malandra: May I interrupt Your Honor in saying if there was a conspiracy—

The Court: You may be seated, Mr. Malandra, and don't interrupt the court and if you desire afterward to correct that otherwise all we're going to do is confuse. You save your objections to the court's remarks until it's done. I am saying that this is the law on conspiracy whether it applies to this or a thousand other cases but if you're

going to argue with me while I'm instructing the jury, all you're going to do is confuse the jury and you may make your notes as soon as I am done, object to the instructions given to it and if they're wrong, I'll correct them. Please, that's the orderly way to do it. You know it better than I do, so conform to it.

This of course, is especially important as far as the rights of both the state are concerned and these defendants are [fol. 441] concerned. There is an illustration, I will qualify it as far as that. I said an alleged conspiracy. See, the state contends that there was a conspiracy here, the defendants vigorously contend there was no conspiracy here. You see what I mean. Basically, of course, that is the whole of the case, if they could both agree there wouldn't be any case. The state says there was a conspiracy the defendants say there was not a conspiracy. What I am giving you is the law of conspiracy whether it applies to this case or a thousand other cases makes no difference. This is the law of New Jersey. Now, getting back again to this particular case, and I am doing that assuming we'll say merely for the sake of argument, that the state's contention is correct, the investigation in this case and the questioning of these witnesses and these conversations between the defendants and any other investigating acts of the state took place long after the conspiracy was over. Therefore, as part of any statements or any conversations given by the individual defense is concerned, it only applies to the particular person giving it. And, you are only to consider it from that standpoint. Now, there may be, shall we say, conversation here with Mr. Garrity, something said concerning one or other of the defendants with a tendency to implicate. Obviously, that is not binding upon either of the other defendants and you are to entirely disregard it. I will repeat. Any statements made at the time that the state was investigating this case by one of these defendants only binds him and does not bind the other two defendants or either of them. That is the law of the state of New Jersey, that is binding upon you in your consideration of the case as jurors and is binding

on me sitting here as the court. Now, I will hear you, Mr. Malandra.

[fol. 442] Mr. Malandra: Your Honor has adequately explained the point that I wanted to make, that the conspiracy you said went that the conspiracy was over.

The Court: Well, are you satisfied, with or without making any further speeches?

Mr. Malandra: Yes, sir.

The Court: Do you have anything to say, Prosecutor?

Mr. Aiken: No sir.

The Court: All right, with that explanation given to the jury and with the admonition to you to consider it as the law of New Jersey, you may proceed with the interrogation.

By Mr. Aiken:

Q. I think I was at the point, Mr. Corbin, where I had asked you what questions and answers were asked by Mr. Rigg of Mr. Garrity, at the time you first went down to police headquarters in Bellmawr in July of 1961?

A. Well, as I repeated before, or as I said before, that Mr. Rigg informed Chief Garrity the purpose of the investigation and what we are there for.

The Court: When and where did this take place?

The Witness: In police headquarters in Chief Garrity's office.

[fol. 443] The Court: Approximately what time?

The Witness: All I can tell you is the middle of July, 1961.

The Court: It was on your first trip down there?

The Witness: On our first trip down there, and at this time, Chief Garrity knew of this, the summons had been taken from the files there and he was aware of that and at this time he told us that that was all his fault, and he just wanted to take the entire responsibility for the entire thing.

By Mr. Aiken:

Q. And was that the extent of the conversation at that time?

A. That was just about it, yes.

Q. And what happened after that, do you have any subsequent conversations with any one of the defendants?

A. Yes, in September, early part of September of the same year, a couple of months later I was in the presence with Mr. Rigg and we had an interview with Chief Garrity at his home in Bellmawr, New Jersey.

Q. And what happened there, or what was said there?

A. Well, Mr. Rigg specifically went there, based on some information we had gathered just prior to this and had specifically requested Chief Garrity regarding drunken driving tickets and he asked Chief Garrity if there was any drunken driving tickets involved in these alterations and at which time the chief stated definitely not, he never touched a drunken driving ticket.

Q. Now, any other conversations with any of the defen- [fol. 444] dants after one that you mentioned in September with Chief Garrity at his home?

A. Yes sir, again December of that same year, 1961, in the presence of Mr. Rigg, we had another interview with Chief Garrity at his office in the municipal building, Bellmawr, New Jersey, at which time he was informed of the drunken driving summonses that had been altered, and in fact they were handed to him and shown to him and asked for an explanation regarding each and every one of them, and at this time we also had asked him for the records concerning the examinations, and Chief Garrity made an explanation for that at that time, that since the summonses had been altered from driving under the influence to a lesser charge, a charge of careless driving, that the medical records no longer applied, and they were taken from the files.

Q. And by the medical records, you are referring to the doctor's examination?

A. Doctor's examination, that was the explanation of why they weren't there.

Q. Now, do you recall any subsequent conversations with Mr. Garrity or either of the other defendants?

A. No.

Q. When did your direct contact with the Borough of Bellmawr end?

A. In January of 1962.

Mr. Aiken: That's all.

[fol. 445] Cross examination.

By Mr. Malandra:

Q. Now, Detective Corbin, am I to understand that you had three meetings with Chief Garrity in the presence of Budd Rigg?

A. Yes sir, that I can recall specifically.

Q. When was that, at his office in Bellmawr?

A. Yes.

Q. And two was at his home?

A. One was at his home.

Q. Where was the third one?

A. At the Bellmawr Police Station.

Q. There were two at the Bellmawr Police Station and one at his home?

A. Yes.

Q. And these three conversations, how much time was taken. Let's take your first meeting, when you went down in July of 1961, how long did you meet with Chief Garrity in his office?

A. I would approximate the time between a half an hour and an hour.

Q. You were there a half an hour to an hour?

A. Yes.

Q. The second meeting at his home, how long were you there?

A. About half hour.

Q. Are you sure now, detective, or are you guessing at this?

A. I'm just estimating it.

Q. Approximately a half hour the second time?

A. Approximately.

[fol. 446] Q. And how about the third time?

A. I would approximate again an hour.

Q. Approximate about an hour?

A. Yes sir.

Q. Now, are you telling me that in these conversations that take approximately two hours or more that all that was said by the chief was that this is all my fault, and that he was shown some tickets of drunken driving which he says he didn't touch, is that all that took place in two hours?

A. The substance of what took place, yes sir.

Q. Did it take you and Mr. Rigg two hours to ask that question?

A. No, of course not.

Q. Now, there must have been many other things said, isn't that right, Detective Corbin?

A. Yes, there were other things said.

Q. Let's go into some of those things. Now, what did he say? What did you ask him, what did he say?

A. Substantially, just what I have testified to.

Q. But you don't want me to believe it took him two hours to make one sentence, do you?

A. No, I don't expect you to believe that.

Q. All right, now what was said?

A. It was said over and over again, other tickets were gone over individually.

Q. He said over and over again for two hours it's my fault, that is what you want me to believe?

A. No, I don't want you to believe that.

Q. Well, let's get down to it, you were there, weren't you?

A. Yes, I was.

Q. And Budd Rigg was there, wasn't he?

A. Yes, he was.

[fol. 447] Q. Now, you tell me what did you ask him and what did he say?

A. Substantially, what I testified to before.

Q. Well now, detective, you have been going over this matter with the Prosecutor constantly for the last week or so, haven't you?

A. No.

Q. You have not been going over this matter with the Prosecutor?

A. I haven't been going over it with him constantly.

Q. Well, have you gone over it with him every day since we've been here?

A. We've talked about it, yes.

Q. You were talking about this case, weren't you?

A. Yes.

Q. And the part that you took in it, isn't that so?

A. No, not all the time, no.

Q. Well, you couldn't talk about a part that you didn't take in it, could you?

A. I couldn't no, he could.

Q. Well, that's what I'm asking you. I'm asking you detective, have you been talking to the Prosecutor about this case for the last eight or nine days?

A. Yes sir, I have.

Q. All right now, you were there on that day, now you tell us what happened?

A. On what day are you referring to?

Q. The first day you went.

A. I will repeat it again. Mr. Rigg and I accompanied Mr. Rigg, we went to Mr. Garrity in his office in Bellmawr, we informed him on the investigation and at that time he said that the whole thing was his fault and he wanted to accept the full responsibility for it.

[fol. 448] Q. And that took an hour? It seems to me like it just took you thirty seconds.

A. I have known Chief Garrity for a number of years, and we have a lot of conversations about other things too, that has no relation to this case.

Q. Now, do I understand that you were talking about other things, that had no relationship to this case there?

A. Yes sir, we were.

Q. Well, can you tell me some of those things?

A. About different cases, I worked in Mantua one time and I came into the office a number of occasions, talked about police work in general, we were both policemen.

Q. And what was Budd Rigg doing while you were having this social gathering?

A. Joining in the conversation.

Q. I beg your pardon.

A. He was part of it too.

Q. He didn't remember any of your cases you had in Mantua, does he?

A. He is a Deputy General law enforcement and it was generally his field at the time too.

Q. Was he familiar with your cases too?

A. Not particularly, no.

Q. Well then, he had no part in the conversation?

A. He was there.

Q. But he had no part in the conversation?

A. I don't remember what he said.

Q. Well, you remember what Garrity said.

A. Yes, I do.

Q. Well, why don't you remember what the man said that you went down with?

A. I don't remember every remark he said, no.

[fol. 449] Q. Well, you must have talked about this case before you went to Garrity's house, didn't you?

A. Sure.

Q. And you prepared what you were going to ask him, didn't you?

A. Yes.

Q. And you can't remember what it was?

A. I do remember what we asked him.

Q. Well, I just asked you if you remembered what Budd Rigg said and you said you couldn't remember.

A. He was talking about the visit at the office. Now, you referred to Mr. Garrity's house, two different places.

Q. Do you remember anything Budd said at any one of the three meetings for two hours?

A. Yes, I do.

Q. Now, can you give me a good reason, detective, why you weren't making the statement that you're making today on this stand?

A. I'm testifying to what I know, and that is my good reason.

Q. That's your good reason?

A. That's the reason.

Q. And yet you don't know what you and Budd Rigg talked about before you went down there.

A. I didn't say that.

Q. Well, do you know what you talked about?

A. Not specifically, no, but I didn't say I didn't know what we talked about.

Q. Well now, do you or don't you know what you talked about, you and Budd Rigg.

A. We were talking about the investigation.

Q. Now, that shouldn't have been so hard to get from you, should it?

[fol. 450] A. You asked me specifically, now it's a general question about what we talked about.

Q. It's pretty obvious you're trying to convict the chief, isn't it?

A. No, no sir.

Q. Have you used the chief for any of the officers or any of the officers of Bellmawr in any matter that you're interested with the state police?

A. Would you repeat that question, I didn't get it.

(Reporter reads question to witness.)

A. No sir.

Q. Didn't you just a couple of weeks ago have Mrs. Naglee testify for you before the state police?

A. Yes sir, Mrs. Naglee, not the chief.

Q. That's all, I said anybody at the office, that's all, Mr. Corbin.

Redirect examination.

By Mr. Aiken:

Q. Now, Mr. Corbin, you testified to what I think you called substance of what Chief Garrity said, did you not?

A. Yes.

Q. But do I take it from what you said that you don't remember specifically everything that Chief Garrity said, every specific word?

Mr. Malandra: I object, it's not proper re-direct.

The Court: I'll overrule it. I think it is.

[fol. 451] A. I can't recall specifically, no.

Q. And you were telling us what the substance of Chief Garrity's statements were, in relation to this matter?

A. Yes sir.

Q. That's all.

Mr. Malandra: May I ask that all that testimony be stricken. He is talking about what in substance took place, he is testifying what he heard and what he said.

The Court: I'll overrule the objection. I feel that it has no merit. Objection to the court's ruling may be entered upon the record. Are you finished with this witness?

Mr. Malandra: Yes sir.

Mr. Aiken: Yes sir.

The Court: All right, you may step down.

(Witness excused.)

Mr. Aiken: Your Honor, I have one more witness, I don't whether the court wants me to call him before lunch.

The Court: No, I think perhaps if it is going to take a little bit of time, I would prefer to let the jury hear the whole thing at the same time, both the direct and cross-examination. At this time we'll adjourn until two o'clock. Room 324, two o'clock.

(Noon recess.)

[fol. 452] The Court: I think we have finished with the last witness, is that correct?

Mr. Aiken: That's right, Your Honor.

The Court: You may proceed, Prosecutor.

Budd M. Rigg, having been previously sworn, testifies as follows:

Direct examination.

By Mr. Aiken:

Q. Your name is Budd M. Rigg?

A. That's correct, yes.

Q. You are the Mr. Rigg that's been mentioned in this trial on several occasions?

A. Yes I am.

Q. And you were in June of 1961, a Deputy Attorney General?

A. That's correct.

Q. In that month, do I understand correctly that in accordance with a Supreme Court order, you undertook an investigation relating to certain matters involving motor vehicle charges in the Borough of Bellmawr?

A. Actually, I undertook the investigation in July, the Supreme Court order was dated the 30th of June and I was assigned to the investigation I think in the first week of July.

[fol. 453] Q. Now, what generally did you do in connection with the investigation of those matters in Bellmawr?

A. Well, after reviewing the materials that were turned over to me pursuant to the order, Detective Corbin was assigned to assist me, and the first thing we did was to go to Bellmawr to the police station to talk with the chief of police.

Q. Do you recall when that was?

A. It was the middle of July, I think the end of the second week of July.

Q. And what was the nature of your investigation with Chief Garrity?

A. Well, essentially I introduced myself and Detective Corbin and advised him of the purpose of our visit that I would be conducting this investigation. I gave him a copy of the Supreme Court order which had been turned over to me, and had, as I recall, some general questioning relating to the procedures and the operation within the police department in connection with municipal court on traffic matters.

Q. Now, was there any other conversation on that occasion between you and Chief Garrity that related to the matters under consideration here today?

A. Not that I recall.

Q. Did you at some subsequent time have any further conversation with any of the defendants?

A. Yes, most of my conversations were with Chief Garrity. I would contact him, I would say all told during the course of the investigation, about six times, seven times, some of the conversations I had with him were procedural, however in September of 1961, I did go down to the police station to see him with Detective Corbin, and, as I [fol. 454] recall, he was not there. He was at home and we had proceeded to his home. I wanted to talk to him there.

Q. What was the nature of the conversation you had with Chief Garrity at his home in September?

A. Well, as a result of certain investigation, I had undertaken during the course of investigation from July to September, I wanted to question him concerning generally the problem of downgrading drunken driving cases, and I asked him specifically whether that had been engaged in by him, and he protested that it had not.

Q. Now, did you have any subsequent conversations with him concerning the matter of alterations of drunken driving tickets?

A. Yes, specifically on November 10th, when I took the statement there were some questions there, pertaining to that, and then subsequent to that after reviewing his testimony and I had in the interim seized the court docket books and the criminal docket book, I had seen what I thought was a pattern in the handling of certain motor vehicle matters in connection with disorderly conduct charges, and, as the result of that Detective Corbin and I returned to the police station and seized from the records which they had there, which I had impounded, some of the summonses which are in question here. After reviewing those then in November, I believe it was, the latter part of November or early December, I returned with Detective Corbin to the police station and confronted him with the summonses and asked him what had happened and who had participated and the like.

Q. And, generally, what was his reply to your confrontation and your questions relating to the drunken driving ticket?

A. At that point in relation to these summonses, they did [fol. 455] say to me that he was aware of them, and that they had been done with his consent as opposed to what he told me back in September. I also at the same time in going over the records, I wanted the medical reports prepared and submitted to the police department by the doctor who made the examinations, and I was unable to find them and I asked the chief about them and he indicated that because they had changed or downgraded the offense, he had disposed of those.

Q. Was he specific as to how he had disposed of the doctor's reports?

A. No, he was not. During that same course of investigation, it had also become apparent that there was a discrepancy in the amounts of monies posted by these various defendants, and the amount accounted for, and I questioned him about that and he indicated that there was a greater amount taken than which was shown in the records and that he then told me what had been done with that money.

Q. Now, in these statements that have already been read into evidence, both in connection with Mrs. Naglee's questioning by you and also Chief Garrity's, there is reference to an envelope, and I show you an envelope and I guess you would call them the contents and also another piece of paper and ask you if you can identify those.

A. Yes, this is the envelope which was taken from the Bellmawr police department safe on November the 10th, by Mrs. Naglee, and which was opened in my presence by Chief Garrity. It contained an original complaint charging Joseph H. Scott with disorderly conduct, and violations of the disorderly conduct act, Section 29, together with eighty-five dollars in cash.

[fol. 456] Q. Now, there is a name on the envelope, I believe, can you tell us what that name is?

A. Yes, it's the name Scott.

Q. Now, there are some figures on the back, what are those figures and what was the explanation, if you can recall, given by either Mrs. Naglee or Chief Garrity in relation to those figures?

A. In relation to the name Scott, I questioned Chief Garrity and he advised me that he had written this name on the envelope, and had given it to Mrs. Naglee. Mrs. Naglee told me when I asked her that the writing on the reverse side of the envelope, together with the figures was hers, and if I may read it, I can explain what she said to me about it. There is designated on the back of the envelope the word careless, across from that ten dollars and five dollars, beneath that disorderly, one hundred five dollars, beneath that, doctor, twenty dollars, and then there is a line with a total one hundred thirty dollars and ten dollars, beneath that is two hundred twenty-five dollars, directly beneath that is one hundred forty dollars, marked with the word paid, showing a balance of eighty-five dollars. Mrs. Naglee indicated to me that this was the form of accounting to show what happened in relation to monies which Scott had turned over to them, the two hundred twenty-five dol-

lars was supposed to represent the amount of money which he turned over and the figures after careless, disorderly and doctor were the deductions from that amount, the eighty-five dollars as marked on the back was supposed to represent the eighty-five dollars in cash here.

Q. Now, in connection with your investigation in relation to the eight so called drunken drivers mentioned, in the indictment, I think you're familiar with their names, are you not?

[fol. 457] A. Generally, yes sir.

Q. Well, just so there's no misunderstanding, I will tell you their names. Robert A. Franklin, John Gregal, Linwood Finney, William Snyder, Robert Killian, Phyllis Zippel, Herbert Brining, Joseph Scott. Now, in relation to any of those eight people, during the course of your investigation, did you find any other similar envelope or money supposedly being held?

A. No.

Q. That's all.

Cross examination.

By Mr. Malandra:

Q. Now, Mr. Rigg, as I understand it on that envelope contains eighty-five dollars.

A. That's correct, yes.

Q. And on the outside of the envelope it says careless, ten dollars fine and five dollars costs.

A. It says ten and five, it doesn't say costs.

Q. And it says disorderly, one hundred five dollars.

A. Yes.

Q. And doctor's twenty dollars?

A. That's correct.

Q. And that indicates that they have paid out of that money one hundred forty dollars.

A. That's what Mrs. Naglee said, yes.

Q. And left a balance of eighty-five dollars?

A. According to what she said was paid, yes.

Q. Did those figures come out right?

A. According to what she said was paid, yes.

Q. The figures are right?

[fol. 458] A. The addition is correct and the subtraction is accurate as it's shown here, yes.

Q. Have you looked at the dockets at all in the Scott matter?

A. Yes.

Q. And isn't that ten dollars and five dollars in there?

A. Yes.

Q. And isn't the one hundred five dollars entered in there?

A. Yes.

Q. Did you hear the doctor testify that he got paid twenty dollars?

A. The doctor told me that he had been paid, yes.

Q. So that there is nothing wrong with that one hundred forty dollars, nobody kept that money.

A. The one hundred forty dollars, no, apparently not.

Q. It was paid out to the proper people?

A. One hundred forty dollars, yes.

Q. And you got the balance of the eighty-five dollars there.

A. There is eighty-five dollars here, yes.

Q. And that was in the safe for how long?

A. I don't know, I was told by the chief it was in there for approximately a year, a year and a half.

Q. Now, am I to understand that you headed the investigation, did you not?

A. Yes.

Q. The chief responsibility of investigation was placed upon you as Deputy Attorney General, is that right?

A. Up to a point, yes.

Q. And Corbin was there just to assist you, is that right?

A. Yes.

Q. And did you do all of the questioning or did Corbin do it?

[fol. 459] Q. As far as I can recall, I did it, the bulk of it.

Q. You did most of the questioning?

A. Yes.

Q. That's all.

Redirect examination.

By Mr. Aiken:

Q. On my direct, I meant to offer the envelope and the money and the complaint that I showed to Mr. Rigg, into evidence, and I forgot to do.

Mr. Malandra: I have no objections.

The Court: Next successive marking, S-31 in evidence.

(The aforementioned article received and marked as Exhibit S-31 in evidence.)

Q. The figures on the back of the envelope are Mrs. Naglee's as I understand it.

A. That's what she said, yes.

Q. And—

Mr. Malandra: I object to that answer, if Your Honor please.

The Court: Why?

Mr. Malandra: He's asked whether or not that is the [fol. 460] handwriting of Mrs. Naglee, and he says that what she says or if the figures are of Mrs. Naglee.

The Court: He said the figures on the back of the envelope are Mrs. Naglee's, and the answer by Mr. Rigg was that is what she told me, isn't that an admission by Mrs. Naglee, according to his testimony, whether the jury believes it or not.

Mr. Malandra: I have no objection, if that is the purpose of it.

The Court: Now, that's what Mr. Rigg said.

The Witness: That's right.

The Court: You didn't answer the question exactly as the Prosecutor put it, in effect he said without saying all this but I construe it as meaning to be that he apparently showed the figures to her some time and she admitted that she put those notations on there. All right, continue.

Mr. Aiken: I have nothing further.

Mr. Malandra: That's all.

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[fol. 463] MOTION FOR JUDGMENT OF ACQUITTAL

Mr. Malandra: May it please the court, I move for a judgment of acquittal on behalf of the three defendants. Your Honor please, this indictment is rather lengthy, and is not drawn especially like the usual conspiracy indictment. This indictment sets forth practically all of the facts that the prosecution intends to prove. However, it does contain the usual charges of the defendants did knowingly, unlawfully, and corruptly agree to dispose of certain traffic tickets.

Now, Your Honor please, my chief objection and my chief argument for a judgment of acquittal is that I believe that the prosecution has not proved a conspiracy. I believe the prosecution has set forth an alleged many facts that are in my opinion not related. They are isolated facts thrown into the case. I do not recall any testimony showing that there had been an agreement, a meeting of the minds, of these defendants for that purpose. I do not recall any testimony where these defendants, any two of them or three of them, met and planned in advance to downgrade or alter any of these tickets. I think the prosecution has proved that certain tickets were downgraded, and I think they have proven that Mrs. Naglee was the court clerk and the violations clerk, and that she did in the course of [fol. 464] her job at the instructions of her superior, did make some changes on some tickets. But, I do not believe that there was ever a meeting of the minds or that there was ever any plan to alter these tickets.

Now, may it please the court, it has also been proven and at this point undisputed by the witnesses of the state that they were not drunk. The witnesses themselves testified that they were not drunk and Your Honor please, this leaves a wide open field as to whether or not there was a downgrading of these tickets because the witnesses themselves undisputed may I say that they were not drunk. Now, I think that the gist of this entire indictment if it please the court, is the so-called agreement or so-called conspiracy, and I cannot say whether they're connected in any way. I believe a lot of isolated facts have been thrown in, and actually on the part of each of the defendants in their respective jobs as for example Edward Virtue, who is the policeman who made the arrests, and clerk who subsequently changed the ticket at the request or suggestion of the chief of police who was in charge. I believe that isolated instances have been proven, but there has not been a combination.

I do not believe that there is any proof that they unlawfully or corruptly or knowingly conspired to alter these tickets. Therefore, Your Honor please, I respectively submit that the conspiracy itself has not been proven and a judgment of acquittal should be granted on behalf of the three defendants.

Mr. Aiken: If the court please, I think that there is ample proof of a conspiracy, I'm sure the court is aware that there's no obligation of the state to prove the three defendants actually got their heads together a particular [fol. 465] time or at a particular place and decided to do that. It was sufficient to show that there was an understanding among them. Now, specifically in reference to that understanding, I call the court's attention to page 5 of Chief Garrity's statement to Mr. Kaplan which reads as follows: "So that in each of these cases, which I will show you that practice was followed as far as you know? Answer, As far as I know. Question, Now these officers who made these original complaints on which summonses were

issued, were they required to be interviewed and their consent obtained before you directed Mrs. Naglee to make the change provided you agreed the change be made? Answer, Yes. Question, That was the general procedure? Answer, There was none with objection on their part."

Mr. Malandra: If Your Honor, please, I don't want to interpret the prosecutor, but he is reading the testimony that has been stricken out from the record.

The Court: May I see. I don't think either of us would accuse him of using methods that would be frowned on. I know him well enough to know he would not do that. Now, this is to page 6. Now this book covers, I think we have agreed to that. I directed your attention to the bottom of page 5 in this book it is marked start here.

"Question, So that in each of these cases which I will show you, the practice was followed as far as you know? Answer, As far as I know, yes. Question, Now these officers who made these original complaints on which the summonses issued, were they required to be interviewed and their consent obtained before you directed Mrs. Naglee to make the change, provided you agreed the change to be made? Answer, Yes. Question, Was that the general pro-[fol. 466] cedure?" And then there is an answer there, there was none, there was an objection on their part, then it says stop and go to page 131.

Mr. Aiken: That was the subsequent proceeding, Your Honor. I'm sorry, I didn't have that marked.

The Court: "Question, That was the general procedure? Answer, There was none with the objection on their part." Then you continued on, that was all stricken. My note says stop and go to page 131.

Mr. Aiken: Well, at any rate, I think it is clear without referring specifically to it.

The Court: I don't think it'll be necessary for you to argue further because the court of course has paid a great deal of attention to all of the testimony that has gone in and the law as the court understands it to be as follows:

Number one, for the purpose of this motion, we must assume that every bit of testimony put in by the state is correct and we further must assume that in its ruling upon the motion, the court has a right to draw from any and all of that testimony in any inferences that may legally and reasonably be taken therefrom. Now, of course, by the time we consider the lengthy statements, even with the exclusion by the court, given both to Mr. Kaplan and to Mr. Rigg, there is much in those statements, whether it be true or whether it not be true, of course, is for the jury, that is for the purpose of this motion must be seriously considered.

Of course, the whole case up to this point seems to rest chiefly upon the statements that were given by the defen- [fol. 467] dant on both occasions. There is some thinking and perhaps with merit in the federal court, as far as the proof of a conspiracy is concerned, obviously Mr. Malandra, you've correctly stated the law, the gist of the conspiracy, in other words, the basic amount that has to be proven is the unlawful agreement between the parties. And, if you cannot prove the unlawful agreement, that is the end of the case even if you can show one hundred different overt acts. In this state, however, the law seems to be rather queer. The impression I believe in the federal court although I make no pretense of being an expert as far as federal law is concerned on this point, used to be that first you prove the actual confederation between the defendants themselves, and then after you prove that you went on to the overt acts or act whichever there was, and then the thought as the court understood it on the part of the federal interpretation of the law was that the proof of the confederation must be done without resorting to the overt acts. The law of the State of New Jersey, however, is entirely different than that and without going into many cases, I will refer merely to two.

Number one is an appellate division decision, it is the case of State vs. Graziani, 60 New Jersey Super. page 1,

the opinion was written by Judge Freund, the court then sitting being Judges Goldmann, Freund, and Haneman. The case deals with this particular point and the expression is may concerning the basic elements of conspiracy as follows. "A conspiracy is rarely capable of proof through direct evidence and the unlawful agreement is most frequently established by inference drawn from proof of overt acts done in pursuance of it and circumstantial evidence is often more certain, satisfying, and persuasive than direct evidence." So that in the Graziani case, the court says you [fol. 468] can take the overt acts that are set forth and are allegedly proven by the state and if it may be inferred from them that there was an illegal agreement between the parties, that that is sufficient to create a jury question at least, as far as the existence of the illegal combination, confederation or agreement, which is of course a necessary element of conspiracy.

I refer further then to the case of State vs. Carpone, reported in 10 New Jersey, 329, the opinion in that case was written by Justice Heher, and may I say further that Justice Wachenfeld defended as Justice Haneman did in the Graziani case of the appellate division, but of course we do have the majority of the Supreme Court speaking on this very point in the following language: "The act of conspiracy is the gist of the offense of conspiracy, but it is not necessary to show an actual association or confederacy and it may be left to reasonable inference." Well, this court's construction of that means, or in any effect, I guess was placed for the finding in State vs. Graziani which was decided perhaps six or seven or eight years after the Carpone case, applying the principle of law therefore to this case and considering all of the evidence that has been presented by the state, most particularly the alleged statements given by the defendants, the court feels that sufficient inference may be drawn from that to make a jury case.

In other words, to have the factual issues decided by a jury. Your motion therefore is denied, as to each of the

defendants. The court's ruling in any and all reasoning thereon may be entered upon the record as an objection on behalf of each one of the defendants.

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[fol. 470] HELEN B. NAGLEE, being first duly sworn, testifies as follows:

Direct examination.

By Mr. Malandra:

The Court: Before you start, Mr. Malandra, I wonder if I could ask your permission to have a slight conversation with Mrs. Naglee before there is any testimony taken. Now, Mrs. Naglee, from something that has been already presented in the case, there is some representation whether the same be true or false, I know not, that at some time previously you suffered from some type of a heart disorder, is that correct?

The Witness: That's correct.

The Court: Now, with the court having that represented to him, the same situation will apply as is I understand applied before when you were answering certain questions. If at any time during your being on the stand being asked the questions, you feel the slightest discomfort, you draw that to the attention of the court. I say that now because the average person doesn't realize the job of appearing in court on a witness stand or the like. And courts, unless you're somewhat hardened to them, like maybe I am and most of the attorneys likewise are, cause a certain amount of nervousness to people. So, if at any time during the case, especially when you're testifying, you feel the slightest discomfort, you draw that to the attention of [fol. 471] the court and the proper measures will be taken to see that the situation may be corrected.

The Witness: Thank you very much.

The Court: Is there any objection to that explanation?

Mr. Aiken: No objection.

Mr. Malandra: Thank you very much, sir.

Q. Now, Mrs. Naglee, what is your occupation?

A. I am violations clerk on the municipal court clerk in the Borough of Bellmawr.

Q. Are you married, Mrs. Naglee?

A. I am a widow.

Q. Do you have any children?

A. I have two sons, my eldest son died very suddenly the 14th of February.

Q. Of this year?

A. Yes, this year.

Q. Now, Mrs. Naglee, you say that you are the violations clerk and the court clerk in the Borough of Bellmawr.

A. That's right.

Q. How long have you held those jobs?

A. Since 1947.

Q. Have you held both those jobs constantly since 1947?

A. No, I was replaced as court clerk in I think what was June of 1960 until Mrs. Ferry took over then until the 31st of December, then I was re-appointed the first of the following year.

Q. That would be for about six months?

[fol. 472] A. That's right.

Q. Now, will you explain, Mrs. Naglee, to me what your duties are as the violations clerk?

A. Well, the duties of a violations clerk are people that don't care to appear before the judge and they come in and sign a waiver and then I can accept that fine.

Q. This being motor vehicle cases?

A. Yes.

Q. And what is your duty as clerk as a court clerk?

A. Well, as the court clerk I sat in the court with the judge when on the night he presides which is Wednesday, and have the complaints made up for him that he's to hear and, well that's it, I guess.

Q. So that your duties in the municipal courts would be the same, for example, as Mr. Perotti's here in this court. You sit right in the courtroom while the procedure is going on.

A. I sit in but we have a Sergeant of Arms that performs that.

Q. Well, Mr. Perotti has a high class title. He is a Deputy of some sort, and also the clerk of this court. He sits here and is at the beck and call of the judge, is that your job?

A. I sit right next to the judge and hand him the cases.

Q. Now, do you in both those positions have books that you enter your cases in and your fines and so forth?

A. Yes.

Q. Now, is there a recent set of books for the violations clerk?

A. There's a traffic control book. The cases that I handle in violations bureau are entered in that, and then they're transferred to the disbursements book for a deposit.

Q. So that you handle the books for the municipal court and the violations clerk of the Borough of Bellmawr?

[fol. 473] A. That's right.

Q. Now how many judges have you worked for, Mrs. Naglee?

A. Well, shall I name them?

Q. If you can, yes.

A. Carl Auerbach, Charles Rudd, Benjamin Dzick, and now Saul Teitelman.

Q. May I ask you a very delicate question and ask how old you are?

A. Well, I'm sixty-five.

Q. Now, as the municipal court clerk and violations clerk, are your books audited regularly?

A. By the Borough auditor every year.

Q. Once a year your books are audited by the Borough auditor?

A. That's right.

Q. Is that a common practice?

A. That's a regular practice.

Q. Now, have you on occasion also been checked by the State auditors?

A. Well, I was before this investigation started, Mr. Aiello was down, that was when Judge Teitelman first had taken over and I guess that was at least six years since this one had been there.

Q. Has at any time your books been audited, has there been any question about how well they were kept?

A. No.

Q. Has any discrepancy ever been shown in your books as long as you have been there?

A. No.

Q. Now, Mrs. Naglee, how often would you see the judge in Bellmawr?

A. Just on court night.

[fol. 474] Q. What night was that?

A. Wednesday night.

Q. Now, when you had any decisions to make concerning the violations department of the municipal court department, who would you go to?

A. Well, I went to Chief Garrity because he was always available.

Q. So did you consider Chief Garrity as your boss?

A. I definitely did.

Q. And was Chief Garrity around constantly?

A. Yes he was.

Q. Did you work day or night?

A. Did I?

Q. Yes.

A. I worked day time.

Q. And your court session is when?

A. Seven to nine on Wednesday night.

Q. So that's your job, you're usually working in the day time except the one night when the judge sits, is that so?

A. That's right.

Q. Now, there's been some testimony alleging that there was an agreement between you and Edward Virtue and Chief Garrity to alter certain tickets, is that so?

A. That is not so.

Q. Was there at any time any agreement between you and Chief Garrity to alter these tickets?

A. Never.

Q. Was there at any time any agreement between you and Ed Virtue to downgrade these tickets?

A. No sir.

Q. Now, I call your attention, Mrs. Naglee, to the statement that you gave on December the 4th that might not be the right day, December 5th, to the Prosecutor of Camden [fol. 475] County. Page 4, this was the statement given to Mr. Kaplan and you were asked this question, "Mrs. Naglee, you're probably aware of the fact that this investigation stems from reports and later evidence of the fact that motor vehicle summonses have been altered and changed in some cases and you answered yes." Was that question asked you and did you give that answer?

A. Yes I did.

Q. And were you asked this question, "Do you say generally that was a fact there have been cases where tickets have been changed or fixed, whatever you want to call it? And you answered "I would rather say altered." Was that question asked of you and did you make that answer?

A. Yes I did.

Q. Now, were you asked this question, question "And that has been a practice for some time in Bellmawr? and the answer It wasn't, I don't know how to put it, it wasn't a practice. It was a case where someone had gone to the chief or something, it wasn't all cases." Were you asked that question and did you give that answer?

A. Yes I did.

Q. So that you informed the prosecutor on December 5th that there was no such thing as a conspiracy to alter tickets, is that so?

Mr. Aiken: I object. This is a leading question, very leading.

The Court: I'll overrule the objection. We're trying to handle this whole thing on its merits within reason as the court sees it. In fact, may I say for the record at one time a group of trial judges were together being addressed [fol. 476] by a very important member of the judiciary. Certain questions were asked and many problems were given to the gentlemen for the advice of trial judges such as myself and may I say further in the county court. I'll never forget the advice he gave us as trial judges as far as criminal cases were concerned. Substantially, what he said was this, that any criminal case particularly the judge should use considerable latitude in the discretion that he should allow as far as the examination of the defendant was concerned. He said I can lay down for you no hard and fast formula or rule. He said if you will follow this general philosophy to try every criminal case on its merits without confusing it with legal technicalities, as far as you are concerned personally there will be in my opinion very few reversals in the upper court.

In looking at decisions out of the appellate division on criminal cases and in viewing much of the appellate procedures that are now going on by letter writers in state's prison on this court at least feels that that admonition is even being carried out by the appellate divisions who are appointing lawyers every day of the week without having the money to pay them or without them being paid whose job it is to inquire into the cases and raise objections which I as a trial judge, feel are absolutely ridiculous. Under the circumstances gentlemen, unless there be any misunderstanding as far as my feeling in this matter or in any other criminal case, you've appeared before me many many times, Prosecutor and I'm not adopting this attitude today. That has always been my attitude both when I have the privilege of serving six years in the Prosecutor's office and approximately seven or eight whatever it is on this bench so that the record will be clear on that point. Proceed.

[fol. 477] The Witness: Yes.

Q. Now, was the chief there constantly during the week in the police station?

A. Well, he'd be in and out, but he spent most of the time, he was always available, in other words because if I needed him, he has a radio in his car and I could have him called in.

Q. He was available to you at all times?

A. That's right.

Q. Now, there are some other tickets here, Mrs. Naglee, where you have made changes. Did you do this of your own accord?

A. No.

Q. How would these changes come about?

A. Well, the chief would say Helen, I'd like you to make this 39:4-97. I've talked to the people and I would do what he told me. I put on 39:4-97.

Q. Did you know any of these people on these tickets?

A. No, I don't know any of them.

Q. Now, were these changes made in an ordinary course during a business day?

A. Yes.

Q. This was your job, was it not?

A. That's right.

Q. Now, there's some talk about money, Mrs. Naglee, did you at any time ever get any money for altering any of those tickets?

A. I did not.

Q. And you personally, did you ever receive any emolument of any kind for downgrading those tickets?

A. Never.

[fol. 478] Q. Do you know whether Edward Virtue or Chief Garrity ever got any money from those tickets?

A. Not to my knowledge, and I doubt it very much.

Q. Now, there was some money that was left in your custody after these cases were completed, is that so?

A. That's right.

Q. Can you tell me what happened to that money?
A. You mean what was purchased with that money?
Q. What happened to the money.
A. Well, I know for one thing we bought a resuscitator.
Q. What's that.
A. That breathes for a person.

Mr. Aiken: For the record, I understand the court's feeling, but just for the record I feel I have to get an objection on the record to this type of testimony, Your Honor, because I—

The Court: The court will rule on that right now lest there be any misunderstanding. Down toward the end of the indictment, the court in reading the indictment sees that the indictment raises the impression that this money may have been appropriated by these people for their own use. The indictment perhaps had been more explicit, as far as that, then there might be some merit to your objection, but in reading on the second page of this indictment, this court gets the impression that the state is charging that these people used whatever monies was held back if there was any held back for their own particular use, in proper protection of the rights of the defendant therefore, if that is not true, the allegation made on the part of the lady is that it is not. The court feels that in fairness and justice to the three of them, it should be made part and [fol. 479] parcel of the testimony. I will therefore overrule your objection. Objection is overruled. Proceed.

By Mr. Malandra:

Q. Now, will you tell me what that resuscitator is?
A. Well, I don't know too much about it, with the exception I heard the boys talking that it breathes for a person.
Q. It's used in helping people breathe?
A. That's right.
Q. Now, Mrs. Naglee, did you at any time during this period of 1959 of 1961, did you at any time think that you were doing anything wrong?
A. No, I did not.
Q. That's all.

Cross examination.

By Mr. Aiken:

Q. Mrs. Naglee, if at any time during the course of my questioning, you feel in need of a recess or a drink of water, will you be sure to indicate that to the judge.

A. Yes, thank you.

Q. Now, as I understand it, Mrs. Naglee, you have just testified that in effect Chief Garrity directed you to make these changes.

A. Yes I did.

Q. Didn't you know, Mrs. Naglee, that there was a prescribed procedure for making changes on traffic tickets?

A. What?

Q. Did you hear Judge Teitelman testify here the other day?

[fol. 480] A. Yes I did.

Q. And did you hear him say that where a traffic ticket was issued in error or something of that nature, that the ticket was to be voided in the ticket control docket?

A. No, I didn't hear him say.

Q. You didn't hear him say that?

A. No, I don't recall him saying that it should be voided, before it be changed, because when Chief Garrity would say I'd like you to make this 4-97, I did it because I felt that they had discovered that the man positively was not a 39:4-50 charge.

Q. Well now, Mrs. Naglee, did you or did anyone as far as you know in the Borough of Bellmawr, keep a traffic control docket?

A. Yes.

Q. Did you keep it?

A. I kept the traffic control.

Q. And didn't you enter tickets in there and mark them void that were issued in error for some reason or another?

A. There was one that was either by rain or something like that?

Q. So that you did enter some tickets in the ticket control docket?

A. Not that they had been written on, no sir. It was either rain or—

Q. Well that's not the question.

The Court: When you say rain, what do you mean?

The Witness: Well now, they carry the tickets in the windshield wiper and—

The Court: In other words on account of water or [fol. 481] rain, some part of the ticket might be obliterated, is that correct?

The Witness: Yes.

The Court: All right, proceed, Prosecutor.

Q. So that you did enter some tickets in the traffic control docket?

A. Yes.

Q. And you knew the purpose of the traffic control docket, didn't you, Mrs. Naglee?

A. Yes.

Q. And what was that purpose?

A. To keep a record of when the ticket was issued and when it was disposed of.

Q. Well, didn't the traffic control docket pertain—

A. Are you speaking of the docket or the ticket control, it's a tablet form.

Q. Ticket control, where the voided tickets were to be entered.

A. Well, that's right, yes.

Q. You entered some tickets in there?

A. Like I just explained, if that was the reason they had to be voided, yes.

Q. And weren't you instructed that all tickets of that nature that had something wrong with them were to be entered into the ticket control?

A. Well, I didn't feel these tickets had anything wrong with them.

Q. I just asked—

[fol. 482] The Court: Now please listen to the question. You see he is asking you a particular question. I mean the nature of this was, and I'm not quoting exactly, weren't you told, now please answer that, I mean when you go into explaining why he hasn't asked you that question so if you listen, if you do not understand the question, then say so and he will reframe the question so that he will get the answer to the specific question that he is asking you. You see if you start answering something else that has nothing to do with this question, he has a perfect right to ask you certain particular questions, and of course, you have the obligation to answer those particular questions. If there is anything incorrect with them or the like, your attorney will in all probability object.

Mr. Malandra: May I ask sir, if this particular docket book that the Prosecutor's office is talking about is in evidence.

Mr. Aiken: Not that I know of.

Mr. Malandra: Well then, I object, if Your Honor please, to this questioning.

The Court: Overrule the objection. I think it is proper. He is asking her what her duties and obligations were in the position that she held and I think it's perfectly regular. Now, reframe your question, Prosecutor, and listen and merely answer that question.

By Mr. Aiken:

Q. Do you understand that question, Mrs. Naglee?

[fol. 483] A. I understand what you're saying, but I don't think these tickets came in that category.

The Court: He's not asking you about those, he's asking you a general question. Didn't you understand that any and all tickets that were voided did you say are supposed to be voided—

Mr. Aiken: That had anything wrong with them.

The Court: Should have been entered into the certain book called ticket control or something like that.

The Witness: Well, I don't feel that there was anything wrong with it because Chief Garrity told me to make the change.

Mr. Malandra: Just answer the question.

The Witness: I don't know how to answer him.

The Court: Supposing I ask you this. As far as you are concerned, and let me give you an explanatory part of it too, in the position that you had there was a certain system set up to handle the motor vehicle matters, isn't that true?

The Witness: Yes.

The Court: Now, what the Prosecutor is asking you is this, let us assume for the sake of argument that there is something wrong with the ticket, we'll say the rain fell on it or the water, it was partially obliterated or the ticket [fol. 484] fell on the ground and was all covered with dirt and you couldn't read it. Now, the Prosecutor said wasn't it part and parcel of your job and didn't you have specific instruction that a ticket of that nature should have been entered in a certain particular book and that certain particular way.

The Witness: I was never instructed where a ticket, the violations was changed, to enter that in the voided column, no.

By Mr. Aiken:

Q. Well, didn't you know, Mrs. Naglee, that it was improper to alter tickets?

A. I never took it into consideration, it was illegal or improper.

Q. Well, you were the court clerk and you have been for some fifteen years.

A. That's right.

Q. Do I understand you to say that you didn't know it was improper to change a ticket?

A. I didn't feel that it was improper.

Q. I'm asking you what you knew, Mrs. Naglee, not what you felt. Didn't you know that it was improper?

A. No, I didn't think, shall I say that I thought it was wrong.

Q. Well, from time to time, directives come down from the office of the Administrative office of the courts to your court?

A. From Trenton?

Q. Yes.

A. No, they do not.

[fol. 485] Q. Didn't Judge Teitelman ever say anything to you about—

A. Judge Teitelman never looked at the ticket control or the docket.

Q. No, I'm asking you what he said. Didn't he ever say anything to you about tickets couldn't be changed?

A. Well, I thought that I amended it like he amended it. He amended them in court, I amended them for the chief.

Q. And did you think that your duties included the right to alter tickets?

A. I really didn't take that into consideration. If he told me to do it, I did it.

Q. Well, do I understand that you didn't make any attempt to find out whether this was proper or improper?

A. I felt that it was doing the right thing.

Q. Did you make an attempt to find out whether it was right or whether it was wrong?

A. What should I have done?

The Court: Now, please listen to me. Don't you see we are working a case in court, there are certain particular rules and regulations that govern. They govern me, they govern your attorney, they govern the Prosecutor, and they govern you as a witness. Now, let me show you where you made a mistake in answering the way you did. He asked you a question which is perfectly proper and you said to him you don't both answering this question, but you say what should I have done. Now, you see that causes nothing but confusion. Questions are asked, and if in the opinion

of your attorney, the question is improper, he objects. Then I rule on whether the question is or is not improper. If the question is not improper, you do not have to answer it. If it is proper, I say to you it is a proper question, [fol. 486] answer it. Now, you see apparently what you're doing is you're not paying too much attention to the question that the Prosecutor is asking you and when you give an answer, the answer that you gave is totally irrelevant. It answers some other question that he didn't even ask you, you see. All right.

The Witness: No.

Q. And it never came to your attention in your fifteen years as court clerk that it was wrong.

A. No.

Q. Now, Mrs. Naglee, you received certain monies from some of the defendants, excuse me, some of the persons who were charged with drunken driving that we have discussed previously, did you not?

A. If my name is on the receipt, yes I received it.

Q. Now, are you talking about the little receipt of this size or the big receipt?

A. The large receipts I always make out. That is the duplicate.

Q. Mrs. Naglee, I show you what is marked S-21 which has a receipt attached and ask you if that is your signature.

A. Yes, now wait a minute, yes that's mine.

Q. What is the date of that receipt, Mrs. Naglee?

A. October 14, 1959.

Q. And it shows that you received a hundred eighty dollars from one Robert Killian, does it not?

A. Yes it does.

Q. And that was ten days after the ticket was issued, if you will refer to the ticket.

A. Yes, I believe it was.

Q. I think the ticket is October 4th, isn't it?

[fol. 487] A. Yes, October 4th.

Q. Now, did you receive a hundred eighty dollars from Robert Killian on October the 14th?

A. I must have, that's my receipt.

Q. Will you tell us, Mrs. Naglee, what happened to that money?

A. You mean when Mr. Killian gave it to me?

Q. Yes, what did you do with the hundred eighty dollars?

A. Well, I evidently turned it over to Chief Garrity.

Q. All of it?

A. Yes I would say all of it.

Q. And was this in cash, Mrs. Naglee?

A. It must have been cash because it took say—it must be cash.

Q. Did you say that you turned the whole hundred eighty dollars over to Chief Garrity?

A. Yes I did.

Q. Do you know what he did with it?

A. Well, I know what he done with some of it.

Q. Well tell us what you know what he did with some of the money?

A. Well, he asked me to change the ticket to 39:4-85, which I did.

Q. Now was that on the same day as the receipt, Mrs. Naglee?

A. I don't have my glasses on. It was I believe October the 16th, isn't it?

Q. Well now, Mrs. Naglee, the receipt, the small receipt that is dated October the 14th?

A. Yes.

Q. Was that the same day that Chief Garrity asked you to change the ticket, if you remember?

A. If Chief Garrity asked me to, the chief must have [fol. 488] asked me on the 16th because that's when I made out the official receipt.

Q. Well, why would you receive a hundred eighty dollars on the 14th?

A. I didn't set the bail, someone else set the bail and the man came in and gave me the bail.

Q. Is that a bail we're referring to?

A. The little white one is, yes.

Q. Well, there's another little white one there Mrs. Naglee, what is that?

A. Well, from the testimony I've heard here, that is Mr. Killian's uncle, I believe.

Q. Yes, the bail was posted by Mr. Del Rossi for two hundred fifty dollars, wasn't it?

A. That's right.

Q. On the fourth or fifth, wasn't it?

A. Yes.

Q. And yet you issued another bail receipt on the 14th?

A. This evidently was the day that Mr. Del Rossi come back and got his bail back and then Mr. Killian himself posted a hundred eighty dollars.

Q. Well now, Mrs. Naglee, was that one hundred eighty dollars that you received on October the 4th, bail?

A. It was bail—

Mr. Malandra: Excuse me a moment, it's not October 4th.

Q. October the 14th.

A. October the 4th was bail. October the 18th, someone set the bail at a hundred and eighty dollars. I didn't set the bail. The man came in and I accepted the bail and I gave him a receipt and I turned it over to Chief Garrity. [fol. 489] Q. So you turned the whole hundred eighty dollars over to Chief Garrity?

A. Yes I did.

Q. And you said that you knew what he did with some of that hundred eighty dollars, will you tell us what he did with it?

A. Well, I believe there was, I'm not sure if this was disorderly or not, I don't have the records here, I'm surmising part of it was disorderly and part of it was for this passing on the shoulder of the road.

Q. Well, you made the entries in the record, didn't you, in relation to that case?

A. I would have to, I wasn't the only one that did that.

Q. You weren't the only one who made the entries?

A. In 1959, yes.

Q. Now, Mrs. Naglee, I show you what has been marked S-12 and call your attention to it for the entry down in relation to Robert Killian, page 29 on the ticket docket, traffic docket, you made that entry in reference to Mr. Killian, didn't you?

A. Yes I did.

Q. And do you know what day you made it?

A. You mean the date of plea?

Q. No, the date you made the entry.

A. I made it on the hearing of 10-14-59 and paid 10-16-59.

Q. Now, how much was the fine and how much was the costs?

A. Five and five.

Q. And that was for a careless driving?

A. No sir, passing on the shoulder of the road.

Q. Now, what happened to the ten dollars that was mentioned there, the five and five?

A. That was deposited in the bank.

[fol. 490] Q. And who deposited it?

A. I did, it would have to be in my disbursement book.

Q. Did Chief Garrity give you that back?

A. Did he give me that back?

Q. Did he give you that money back.

A. He gave me ten dollars for this, for Mr. Killian for passing on the shoulder of the road and I deposited the money in the bank.

Q. And that was the date of the court hearing, you say?

A. It's marked hearing.

Q. Well, Mr. Killian testified, I think you will recall Mrs. Naglee, that he never appeared in court.

A. That's right.

Q. So there couldn't have been a court hearing, could there?

A. No, there wasn't.

Q. Now, your docket shows that the hearing was on October the 14th, is that correct?

A. This is on—yes, yes.

Q. That's October the 14th of 1959?

A. Yes.

Q. Now, Mrs. Naglee, I call your attention to the ticket on S-21 and ask you to tell me what the court appearance date is on that ticket.

A. The appearance is marked there the 21st, but they can waive that if they care to.

Q. Well, that's not true, is it?

A. No.

Q. Of a charge of disorderly conduct?

A. What?

Q. That's not true of a charge of disorderly conduct, is it?

A. You mean they can waive the five days for—

[fol. 491] Q. No, I'm talking about waiving a court hearing, Mrs. Naglee.

A. Oh no, I said they could waive the five day if they wanted it. No, the only thing on a disorderly conduct, the only thing is they can get a postponement.

Q. But they have to appear in court, don't they.

A. They're supposed to, yes.

Q. But you know, as a matter of fact, that Mr. Killian never appeared in court, don't you?

A. That's right.

Q. Yes. Now, the reference in the criminal docket, for Mr. Killian shows that he paid a hundred dollars fine, doesn't it?

A. In what?

Q. In the criminal docket.

A. No, he paid fifty dollars.

Q. All right, fifty dollars and five dollars costs.

A. Yes.

Q. On a charge of disorderly conduct?

A. That's right.

Q. Now, did you get that fifty-five dollars back from Chief Garrity?

A. Yes I did.

Q. And deposited it?

A. Yes I did.

Q. Now, that total is fifty-five and ten, I believe, isn't it, yes, sixty-five dollars, But you gave Chief Garrity a hundred eighty dollars.

A. Yes.

Q. And do you know what happened to the remainder?

A. All I can think is Chief Garrity will have to answer that.

Q. Well, I'm asking you.

[fol. 492] A. I don't know.

Q. Now, between the time you gave Chief Garrity the one hundred eighty dollars and the time he gave you back the fifty-five dollars and ten dollars, do you know where he kept that money?

A. Before he gave it back to me?

Q. Yes.

A. Well, he evidently had it in the envelope.

Q. What envelope?

A. We have an envelope there that has money in it.

Q. And where was that envelope kept?

A. In my drawer.

Q. In your desk?

A. Because I had the key to it, and his desk was left open and mine wouldn't be.

Q. And you had the only key to the desk?

A. No, he has a key to my desk.

Q. And was that where the money was kept, the excess money from these tickets?

A. Yes sir.

Q. Now, you had access to that money, Mrs. Naglee.

A. There's been occasions where the chief has told me to give—

Mr. Malandra: Just answer the question.

The Witness: Yes.

Q. Now, when someone wanted some of that money, Mrs. Naglee, what was the procedure for getting it?

A. Well, there wouldn't be just anyone, it would be either Chief Garrity would take the money out or sends [fol. 493] one of the officers and ask me to give them so much out of it.

Q. You mean the officer would come and say the chief said to give him so much money?

A. That's right.

Q. And then you would give the officer the money?

A. Yes, I would.

Q. Now, Mrs. Naglee, you knew that you were supposed to account for all monies that came into your hands as court clerk and violations clerk, didn't you?

A. I did know, that part that went to the Borough or to the County or to the State, yes I made an account.

Q. I am talking about all monies, Mrs. Naglee.

Mr. Malandra: Just answer the question.

The Witness: I don't know just how to say it, but the chief gave me that money to put in the envelope and I didn't question him what it was in there for.

Q. You knew where it came from, didn't you Mrs. Naglee?

A. I could presume if it was from someone like this, had been in and paid a fine, yes.

Q. And you knew they weren't paying a fine for a drunken driving charge, didn't you?

A. Well, I'd have to because I was the one that altered the ticket.

Q. Yes, you knew the money in the envelope was the excess over the total amount of the so-called fines.

A. Yes.

Q. You knew that?

A. Yes.

[fol. 494] Q. And you're telling us that you didn't know there was anything improper about that.

A. No.

Q. Now, from looking at the dockets which are in evidence, Mrs. Naglee, the Borough auditor wouldn't be able to tell that there was anything wrong with the ticket or that more money had been paid you than showed in the docket, could he?

A. No.

Q. There wasn't any possible way for him to know that just from looking at the docket, was there?

A. Comparing the docket with the disbursement book, you mean?

Q. No, I'm talking about just looking at the dockets.

A. No.

Q. He couldn't tell?

A. No.

Q. Now, when the chief asked you to change a ticket, you never refused, did you?

A. No, I thought it was my duty.

Q. In effect you agreed to change it then.

Mr. Malandra: I object.

The Court: You mean if you ask a question in other words, did you protest, I will permit that.

Q. You didn't protest, did you?

A. No.

Q. And you knew, also, didn't you, Mrs. Naglee, that the procedure in relation to the alteration of the tickets was that the issuing officer had to agree to the change.

[fol. 495] Mr. Malandra: I object. It calls for a conclusion.

The Court: That's part and parcel of her statement.

Mr. Malandra: I will withdraw it then.

The Witness: I was never in on any conference with the chief or the arresting officer. The chief would come to me and ask me to change 39:4-50 to 39:4-97.

Q. Then are you telling us now that you didn't know that the procedure was that the issuing officer had to agree to the change.

A. Well, I would presume that the arresting officer had evidently spoken to the chief, if it was a hardship case or similar, but I wasn't—

Q. Do you recall telling Mr. Kaplan that that was the arrangement?

A. No, I never said there was an arrangement.

Q. Or procedure or practice?

A. No, not procedure.

Q. What would you call it, Mrs. Naglee?

A. It was just one of those things that the chief would come in and ask me to change that ticket.

Q. But you knew, isn't it true, Mrs. Naglee, that on occasions the issuing officer, the officer who made the arrest, would come in and ask you to change a ticket?

A. No, they never came to me.

Q. And you would check with the chief to see if it was all right?

A. That's not so.

Q. It isn't so?

A. No, it is not so.

[fol. 496] Q. Well, isn't it so that the chief and the arresting officer discussed the matter in your presence?

Mr. Malandra: She's already answered that. She said she never had been in any conference.

The Court: No, she said she never had. Well, you may answer it anyway.

The Witness: No.

Q. Now, Mrs. Naglee, you remember the questioning that Mr. Kaplan did, Mr. Malandra referred to it earlier this morning?

A. Yes sir.

Q. Do you remember being asked this question and giving this answer, page 5, "Question, And that has been a practice for some time in Bellmawr? Answer, It wasn't, I don't know how to put it, it wasn't practice, it was a case where someone had gone to the chief or something. It wasn't all cases." Now, Mr. Malandra asked you that question and answer, and you said yes, but my question goes on to the next question and answer.

Mr. Malandra: Didn't say yes at all, Mr. Prosecutor, if you want to read the question and answer—

The Court: All right. Hold it. Give me the book. Page 5, second question. "Question, And that has been a practice

for some time in Bellmawr? Answer, It wasn't, I don't know how to put it, it wasn't a practice. It was a case where someone had gone to the chief or something, it wasn't all cases."

[fol. 497] Mr. Malandra: Now, there Your Honor please, the Prosecutor said and you answered yes.

The Court: Well, he has a right to lead. Obviously the answer.

Mr. Malandra: That's not the answer, he's referring to a question and answer.

The Court: All right, I will read it again and ask the jury to listen to what is in the think. "Question, And that has been a practice for some time in Bellmawr and the answer is it wasn't, I don't know how to put it, it wasn't a practice. It was a case where someone had gone to the chief or something, it wasn't all cases." That is the answer. Now, do you want the next question too?

Mr. Aiken: Yes, Mrs. Naglee, when Mr. Malandra asked this morning if you had been asked that question and gave the answer, your reply this morning was yes, wasn't it?

A. That I had been asked that question, yes, but my answer wasn't yes to the question that Mr. Kaplan put to me.

Mr. Aiken: No, I didn't say it was, but now I want to go on and ask you if you were asked this next question and gave this next answer. "Question, Not all the cases? Answer, If someone had a hardship case, he went to the arresting officer and they in turn went to the chief and he would try to give the person a break." Now, do you remember giving that answer to that question.

[fol. 498] A. I must have said it.

Q. And let me ask you if you were asked this question and gave this following answer. "Question, If the chief or the arresting officer or possibly you were contacted with the request to change it, alter it, and you felt like doing it, it could be done if the chief would direct you to do it, but the chief always had the consent of the arresting officer.

Answer, Yes, I never did one of my own." Were you asked that question and did you give that answer?

A. Yes I did.

Mr. Malandra: Your Honor, may I at this time respectfully suggest that the jury be warned that any statement given by Mrs. Naglee pertains only to Mrs. Naglee and not to the other two defendants.

The Court: All right, I think perhaps I have already given an explanation, but because the court feels that the question has considerable merit, the court will again charge you the law to be as follows.

These statements were taken from all of the evidence that I can consider now to have been presented long after the conspiracy was or the alleged conspiracy was complete. Obviously, therefore, they in view of the fact that they're not concerning acts done in the pursuance of the object of the alleged conspiracy, they're inadmissible as proof binding upon other people charged with the alleged crime. Now, in simple words that means this, where Mrs. Naglee, or any of the other witnesses, and by witness I mean any of the defendants, is confronted with various questions being asked them and various answers being given, the answer to those questions are only binding upon themselves, and they are not binding upon the other defendants in the [fol. 499] case. We went over the statement and attempted to simplify it by applying the various rules of evidence and the like pertinent to it, and the court made a lot of rulings and there is a lot of in here of course that will not be asked, and of course wouldn't be answered, but please keep in mind throughout the interrogation on all of these statements by any one of the defendants, that what they say is only binding upon themselves and their own personal individual statement and is not binding upon either of the other defendants in the case. Is that satisfactory?

Mr. Malandra: Yes sir.

The Court: Is there any objection, Prosecutor?

Mr. Aiken: No, Your Honor.

By Mr. Aiken:

Q. Now, Mrs. Naglee, when you would make these entries in the docket, in relation to the disorderly charges after you had changed a ticket, for drunken driving, to disorderly, when you made the entry, did you put the hearing date on a court night?

A. Did I put it?

Q. Yes, would you show your entry that the hearing on the disorderly conduct charge was held on a court night, a Wednesday night?

A. I presume I did.

Q. Did you do that in all cases, do you know?

Mr. Malandra: If you know, Mrs. Naglee, if you know.
[fol. 500] The Witness: Where I took care of them.

Q. Well, did you take care of the entry on Robert Franklin, page 25 criminal docket. Did you take care of that entry on the top entry, Mrs. Naglee?

A. Who is this supposed to be?

Q. Robert Franklin.

A. Well, it's not the top one.

Mr. Malandra: Next to the last, Mrs. Naglee.
The Witness: Yes I did.

Q. You took care of that one?

A. Yes.

Q. Now, the hearing date is shown as what?

A. 11-26-60.

Q. Now, I show you the complaint issued to Robert Franklin, marked S-17 and ask you what the return date is on that ticket?

A. November 30th.

Q. Now, which of those two dates would've been the hearing date?

A. Whichever would've been the Wednesday.

Q. Well, if I told you that November 30th, 1960, was a Wednesday, would that be right?

A. That would've been the hearing night.

Q. And you made the entry on Robert Franklin as appearing on November 26th, did you not?

A. Yes, paid 11-30-60.

Q. And that was four days before the 30th, wasn't it?

A. Yes.

Q. Or a Saturday night?

[fol. 501] A. Yes.

Q. The 30th was a Wednesday?

A. Yes.

Q. And to your knowledge, no hearing was ever held by the municipal court in Bellmawr on a Saturday night, was it?

A. No.

Q. I think that is all.

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[fol. 521] EDWARD VIRTUE, being first duly sworn, testifies as follows:

Direct examination.

By Mr. Malandra:

Q. What is your official capacity in Bellmawr?

A. I am a detective.

Q. Now, Mr. Virtue, I'd like to ask you first whether or not there was an agreement between you and Chief Garrity and Helen Naglee to alter these tickets?

A. Definitely not.

Q. I would like to ask you whether or not you received any money at all from any of these tickets.

A. No sir.

Q. I'd like to ask you if you received any money of any kind from any of these tickets.

A. No sir.

Q. Now, you were the arresting officer, apparently, on all of these that are here in court today. I would like to start and take each one separately, so that we have a chronological order of these arrests. I want to take Robert Franklin. Do you remember arresting him?

A. Yes sir. Mr. Franklin was involved in an accident on West Browning Road. I responded to the call and Mr.

Franklin was arguing with the other driver that was involved in the accident. I talked to Mr. Franklin, I asked Mr. Franklin if he had been drinking. He said no, I'm not drinking, why. I said well, you appear to have had quite a few. He says not me, he says, I had maybe one to kill the pain in my mouth. I just come from a navy dentist [fol. 522] and he done a lot of work in my mouth. And, I said well, Mr. Franklin, will you come into headquarters with me while I run a drunkometer test on you and at that time he became very belligerent. I put Mr. Franklin in the car and I took him into headquarters.

Q. Did you write a ticket immediately or did you wait until after the examination to write a ticket?

A. I wrote the ticket immediately. That is when he really became belligerent.

Q. Speak up.

A. I said I wrote the ticket immediately. That is when he really became belligerent. We came into headquarters, I gave him the drunkometer test and I got a reading, I don't know whether it was around eight or nine hundreds of one per cent, which is insufficient for a conviction. The state requires fifteen hundreds of one per cent blood alcohol. I talked to Chief Garrity about this case and he checked with the navy hospital and he found out that the man was in there and that they had given him a sedative to kill the pain. He was also told that he wasn't supposed to touch anything to drink, so after speaking to the chief, I amended the complaint to 39:4-97 and I charged the man with disorderly conduct.

Q. Why did you amend that complaint and charge him with disorderly conduct?

A. Because I didn't, I had insufficient evidence to convict a man in court.

Q. Now, we'll take John Gregal, do you remember him?

A. Yes. Mr. Gregal was involved in an accident on West Browning Road also. He hit the back of a Borough truck. When I got there, Mr. Gregal was arguing with the truck driver and the truck driver said to me, he said I want him

locked up for drunken driving. I said are you going to sign [fol. 523] the complaint and he said yes, I will. So I gave him a summons for 39:4-50. We came into headquarters, and Doctor Cooperman examined him and Doctor Cooperman said that he was not drunk. After the truck driver heard that, he said well, I don't feel as if I want to go through with the complaint and I had no alternative but to amend the complaint.

Q. In other words, you had already made the original out?

A. That's correct.

Q. And did you get the advice or consent of the chief?

A. Yes, I spoke to the chief about it and the chief said if the driver didn't want to go through with it and the doctor said he wasn't drunk, to amend it.

Q. Now, we go to Linwood Finney, do you remember him?

A. Mr. Finney was a colored truck driver and he was stopped on the Black Horse Pike in a routine check. When I stopped Mr. Finney, he started hollering discrimination and giving me a tough time and I asked him to come to headquarters so that I could run a drunkometer test. Well, he consented to go along with the test, but he was belligerent the whole time. After I gave him a drunkometer test, I don't remember the reading, but I know that it was insufficient. Mr. Finney posted bail and he came to a hearing and if I remember correctly he was called, he was there and the judge forfeited his bail.

Q. The judge forfeited his bail?

A. Yes sir.

Q. All right now, we go to William Snyder. Do you remember that one?

A. Yes, Mr. Snyder was involved in an accident. He struck a pole on Browning Road. I asked Mr. Snyder [fol. 524] if he had been drinking and he said I had a couple, I took him in, I had him examined, and I don't remember why but I know the judge amended a complaint to 39:4-97 and he also found him guilty of careless driving. That was heard in court.

Q. You say in that case the Judge Teitelman made the change in court?

A. Yes sir.

Q. All right now, do you remember Phyllis Zippel?

A. Yes, I remember Phyllis Zippel. Phyllis Zippel was also stopped in a routine road check. We smelled alcohol on her breath and we brought her in and we had her examined by Doctor Cooperman after the examination, Doctor Cooperman proceeded to take her home. The next morning, before I went off, Mrs. Jean Paskel come in and asked for me and asked for Chief Garrity. She spoke to us and told us that Phyllis had come to see her and that she stated she was not drunk. Well, I explained the case to her, but Mrs. Paskel said well, the reason I'm here, I would like to know if you could give the girl a break. I asked her what she meant and she said she has two small children, her husband has left her, she has no money, she's being evicted from her home, I went to the chief and talked to the chief and the chief said under the circumstances, maybe it would be better to give her a break.

Q. All right now, to go to Robert Killian, do you remember Robert Killian?

A. Yes, I remember Mr. Killian. Mr. Killian was also stopped on a routine check and this was on a Sunday night. Mr. Killian, as soon as he was stopped, we stopped him due to the way that he was driving his motor vehicle, the erratic manner, and as soon as Mr. Killian seen me along side of the car, he started jumping up and down and [fol. 525] calling me a lot of names. The reason for that is that Mr. Killian had previous trouble with the police department over his wife. I took Mr. Killian into headquarters, I was unable to get a doctor. I didn't have any kits for the drunkometer and I had already wrote the ticket. So, I placed Mr. Killian in the county jail. Monday morning, I talked to Chief Garrity about this case and he told me well, you should know better, he said the man wasn't examined by a doctor, he wasn't examined by a drunkometer. How do you expect to get a conviction. You can't

prove the state's case, so I talked it over with him and he said well, under the circumstances, I think it would be better to amend the complaint and charge the man with careless driving.

Q. Now, Herbert Brining, do you remember arresting him?

A. Very well. Mr. Brining was also stopped on a routine check and he was given, yes he was examined by Dr. Cooperman. After the examination, he was taken home and I guess it was around nine o'clock the next morning, Mr. Brining come walking up with his wife and five or six little kids and Mrs. Brining started crying to the chief that he was a truck driver and if he—

Q. What was the report of Dr. Cooperman?

A. Dr. Cooperman said he was a border-line case.

Q. And—

A. And she asked the chief if we would give him a break and well, I agreed to it and the chief and I said it was all right to amend the complaint.

Q. But the doctor did give you a report that he was a border-line case?

A. Yes, Dr. Cooperman's report said it could go one way or the other.

[fol. 526] Q. All right. Now, we come in Scott. Do you remember Mr. Scott?

A. Mr. Scott was also stopped on a routine road check, due to the way he was operating his motor vehicle. I spoke to Mr. Scott and I could smell the alcohol on his breath. I brought Mr. Scott into headquarters and after issuing him a summons then he really blew his stack. He said look, I've had one bottle of beer, I am not drunk. Well, I said we'll soon find out. We'll go in and see the doctor. So, I radioed ahead and asked the doctor to come into headquarters. We went into headquarters, Dr. Cooperman took the man into the back room and he had him there for about fifteen or twenty minutes, and he come out and said to me he says Ed, I can't pronounce this man, and I said why, doctor, and he said well, he showed me a bottle of medicine,

he said he has a back injury and he is taking this for a sedative. He said now, it's possible that with one bottle of beer, that it would accelerate the alcohol with the medicine.

Q. Now, I ask you, Detective Virtue, did you at any time you and Chief Garrity or you and Helen Naglee ever sit down and plan in advance that you were going to help these people?

A. No sir.

Q. Did the three of you ever agree that you were going to do this thing?

A. No sir.

Q. When you had conversations concerning the circumstances of each case, you talked only with the chief, didn't you?

A. That's correct, he's my boss.

Q. Now, are you married?

A. Yes I am sir.

[fol. 527] Q. Do you have any children?

A. I have three sir. I have a daughter 15, I have a son 11, and I have a daughter 11 months.

Q. Now, I would like to ask you once again, Detective, did you at any time get any money from any of these tickets, personally?

A. Not one cent.

Q. That's all.

The Court: Supposing we take a recess.

(A short recess is taken.)

Cross examination.

By Mr. Aiken:

Q. Mr. Virtue, was it your practice in all drunken driving cases to issue a drunken driving ticket before you took them to police headquarters and had them examined?

A. Yes, we always issued a summons before taking them to headquarters because it had been brought out in court on several occasions, did you make it out before or after the doctor's examination or were you in doubt?

Q. But, at any rate, you always made them out before you took them in to have them examined?

A. Yes sir.

Q. Always?

A. Yes sir.

Q. Now, you mentioned you were a drunkometer operator?

A. Yes.

Q. Now, in connection with operating a drunkometer, [fol. 528] don't you make a written report of the findings of the drunkometer?

A. Yes.

Q. And did you do that in the cases that you mentioned that you had taken in drunkometer tests?

A. Yes.

Q. What happened to the report, where you did take a drunkometer reading?

A. Where they were insufficient, or not up to par, I just destroyed them.

Q. Did you destroy them before or after you changed the ticket?

A. At the same time.

Q. And did you do that with Chief Garrity's consent?

A. Yes sir.

Q. Now, did you say you ran a drunkometer on Robert A. Franklin.

A. Yes sir.

Q. Was he examined by Dr. Cooperman also?

A. Yes sir he was.

Q. Do you know what happened to Dr. Cooperman's report in that case?

A. I do not, sir.

Q. Did you change the ticket in that case?

A. I couldn't say whether I changed it or whether the chief took care of it.

Q. Can you tell by looking at the ticket?

A. Yes.

Q. Would you do that?

A. Yes sir. No sir, that is not my change.

Q. Do you know whose change it is?

A. No sir, I do not.

Q. Well, is it Chief Garrity's, if you know?

[fol. 529] A. I couldn't say, sir.

Q. Do you know when it was changed?

A. No sir, I do not.

Q. Was it changed in your presence?

A. I couldn't answer that, sir.

Q. What time of day or night did you issue that ticket?

A. This summons was issued on the 9th day of November, at 2:30 p. m., sir.

Q. Now, you say you didn't alter the ticket?

A. No sir.

Q. Did you call the hospital the next day about Mr. Franklin?

A. Yes I did, sir.

Q. And then did you talk to the chief after that, the next day?

A. I believe I did, sir.

Q. Was the ticket changed up to that point, do you know?

A. I don't believe so, sir.

Q. Now, you say you charged him with disorderly conduct?

A. Yes sir.

Q. When did you charge him with disorderly conduct?

A. Upon bringing him to the station I told him that there was a complaint signed for disorderly conduct.

Q. That's the same day that he was picked up and when you charged him with drunken driving?

A. That's correct, sir.

Q. And at that same time, did you also charge him with careless driving?

A. I couldn't say when it was changed to careless driving, sir, but the drunkometer shows that he was under the influence.

[fol. 530] Q. No, I am asking when, if ever, you charged him with careless driving.

A. After talking to the chief.

Q. And that was the next day?

A. I believe so.

Q. Can you remember whether that was a weekend or an ordinary week-day or what?

A. No sir, I couldn't tell by the summons, sir.

Q. Do you have the complaint you made against him for disorderly conduct?

A. No sir, I do not.

Q. Do you know where it is?

A. I do not, sir.

Q. Have you tried to find it?

A. I have not, sir.

Q. Do you know whether or not it is now in the records of the Bellmawr Municipal Court?

A. I believe it is, sir.

Q. Did you say that Mr. Franklin appeared in court on the disorderly conduct charge?

A. I did not, sir.

Q. Did he?

A. I don't recall, sir.

Q. Well, as a matter of fact you know he didn't, don't you?

A. Only from the time that I have heard here, sir.

Q. Well, if he appeared you would have testified against him, would you not?

A. I would've.

Q. And wouldn't you remember that?

A. I have been in court a lot of times, sir.

Q. Now, you say that you issued a complaint for drunken driving immediately upon stopping him on the road?

[fol. 531] A. Yes sir.

Q. Did you run a drunkometer on him?

A. On Mr. Gregal?

Q. Yes.

A. No, he was a doctor's examination.

Q. Now, did you make the change on that ticket?

A. It was done with my consent.

Q. Well now, look at the ticket and tell me if that is your change?

A. No sir, that is not my writing.

Q. This is S-18, that I have just shown the witness. Will you take a look at that, and at the change there to be sure whether that is your writing or not.

A. That is not my writing, sir.

Q. Do you recall being questioned by Mr. Kaplan on December the 5th?

A. Yes.

Q. What is the number of that ticket?

A. 5611, sir.

Q. Do you recall him showing you that ticket?

A. No sir.

Q. You don't?

A. No sir.

Q. Do you recall this question asked by Mr. Kaplan and this answer by you, on page 54.

The Court: Do you have that paragraph?

Mr. Malandra: Yes sir.

The Court: See, it would be more convenient for the court if when the Prosecutor or you refers to statements, if you let the court know that each of you have found it. [fol. 532] For example when he says what page, you say yes, you say I have it and then we can go ahead.

Mr. Aiken: Incidentally, Mr. Virtue, you recall that before you gave that statement to Mr. Kaplan you were put under oath?

A. Yes, I do sir.

Q. Do you remember hearing this question, and giving this answer to it. "Question, Number 5611, John Gregal, charged originally with drunken driving, changed to careless driving by writing '50' and putting in '97' and disposed of in the violations bureau for ten and five, which was received by Mrs. Naglee on a careless driving charge, and I ask you whether or not you made that alteration. Answer, That is my writing." Do you remember giving that answer?

A. No, I do not sir.

Q. Do you remember the following question and the following answer. "Question, Do you recall whether there was a disorderly conduct charge in this case of Gregal's? Answer, No sir, I do not." You remember giving that answer?

A. Possibly I did, sir. I don't remember.

Q. You don't remember admitting to Mr. Kaplan that you made the change on that ticket?

A. This is definitely not my writing, Mr. Prosecutor.

Q. Well now, you told Mr. Kaplan, didn't you, that that was your writing under oath?

A. At the time that Mr. Kaplan was speaking to me, Mr. Philip Large was there, Mr. Corbin was there, when I admitted to changing the ticket, I admitted that it was done [fol. 533] with my consent sir, but this is definitely not my handwriting, Prosecutor.

Q. Well, your answer was that is my writing, isn't it?

A. Well, then I misunderstood the question, sir.

Q. Now, do you know when that change was made on the Gregal ticket?

A. No, I do not, sir.

Q. Were you present when it was made?

A. I don't remember, sir.

Q. And you don't know whose writing it is?

A. No sir, I do not.

Q. And you don't know when you consented to the change?

A. I believe I consented to it the same day, due to the fact that the doctor said Mr. Gregal was not under the influence.

Q. Did you see the doctor's report?

A. I believe I did.

Q. Do you know what happened to that report?

A. I do not know.

Q. Now, I show you a ticket number 5537, relating to Linwood Finney, and ask you to look at the change on that ticket. Did you make that change?

A. No.

Q. Do you know who did?

A. I am not sure.

Q. Do you know when it was made?

A. I do not know.

Q. Didn't I understand you to say under direct examination that you made the change on that?

A. I don't remember, sir.

Q. Well, didn't you say that you ran the drunkometer [fol. 534] on Finney and found insufficient finding and then made the change?

A. Yes I did sir, but when I made that statement, it was to this extent, that knowing that I had insufficient evidence for a state case, I would go to Chief Garrity and by that meaning that I would ask him about changing the complaint. I didn't say that I had made this change. My summonses were turned in at the desk to the violations bureau.

Q. Well, do you know when the change was made?

A. No I do not, sir.

Q. When did you speak to Chief Garrity about making the change?

A. I believe the next day, Mr. Prosecutor.

Q. Is it possible that Mrs. Naglee made the change there?

Mr. Malandra: I object.

The Court: Sustained. It is probability under the law.

Q. Did you charge Finney with disorderly conduct?

A. Yes I did.

Q. You made out and signed the complaint?

A. Yes I did.

Q. Do you have it here?

A. No sir.

Q. Did you testify against Finney in court?

A. I could've.

Q. Did you?

A. I don't remember, sir.

Q. Well, didn't you say in relation to Finney under [fol. 535] direct examination that he didn't show up in court and that the judge forfeited the bail?

A. Yes I did, sir.

Q. Well then, you do remember?

A. Yes sir, I do.

Q. Now, in relation to William Snyder, did you make the change on his complaint?

A. I haven't seen the summons, sir.

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[fol. 554] EDWARD VIRTUE, having been previously sworn, resumes the stand.

Cross examination.

By Mr. Aiken:

Q. Now, Mr. Virtue, when we started to talk about the Snyder ticket yesterday, we adjourned. I think you had testified that the change on this ticket was made by Judge Teitelman and that is his handwriting, is that right?

A. Yes sir.

Q. Did you see him make that change?

A. Did I see the Judge make the change?

Q. Yes.

A. No sir.

Q. Well, how do you know he made it?

A. It was testified to in court by the judge, that it was his handwriting, sir.

Q. Well, do you recall him testifying that that was his handwriting on the back?

A. Yes.

Q. Yes, on the back, but not the change on the front, it doesn't look like it, does it?

A. No sir.

Q. No, it doesn't. And, you have no personal knowledge of who made the change on this ticket, is that right?

A. No sir.

[fol. 555] Q. Now, as to Phyllis Zippel, did you make the change on the Zippel ticket, do you want to look at it?

A. That's not my writing, sir.

Q. Do you know who made it?

A. I do not, sir.

Q. Did you authorize it?

A. I consented to it, sir.

Q.And to whom did you express your consent?

A. I talked to Chief Garrity.

Q. And that was after I think you said Mrs. Paskel came in the police station the next day?

A. That's correct, sir.

Q. And was that the day the money was paid over?

A. I don't remember, sir.

Q. You don't remember seeing any money pass that day?

A. I do not, sir.

Q. Did you tell either Mr. Kaplan or Mr. Rigg that Mrs. Paskel had come in the police station the next day about Phyllis Zippel?

A. I told Mr. Kaplan a lot of things I don't remember, Mr. Prosecutor. I don't remember exactly what I told him.

Q. Page 36, do you remember being asked by Mr. Kaplan this question and giving this answer in relation to Mrs. Zippel, "Question, Are you familiar with the case? Answer, Vaguely."

A. I could have possibly said that, yes sir.

Q. Well, you did say there's no question about that is there?

A. I don't remember, sir.

Q. Do you remember this question and answer, "Question, Do you know whether Mrs. Zippel was examined for drunken driving? Answer, I can tell you she was. Question, Do you remember the nature of the report made? [fol. 556] Answer, I believe she was found to be under the influence." Do you remember that?

A. I don't remember saying it, but if it's in my deposition, yes sir.

Q. You have no recollection of saying this to Mr. Kaplan?

A. As I explained before, Prosecutor, I had a lot of men asking me questions that day.

Q. Yes. "Question, The doctor pronounced her unfit to drive, in other words? Answer, Yes." Do you remember that?

A. I could've said it, yes.

Q. "Question, And were you asked would you consent to the change, do you remember? And the answer is I believe it was a hardship case." Do you remember that?

A. I remember Mrs. Paskel telling me it was a hardship case and she explained the case to me.

Q. You remember that question and answer though?

A. No sir.

The Court: You see, Prosecutor, I think he has given an answer that is understandable. Part of his answer is that he doesn't specifically remember individual questions, and in all probability because of the lapse of time, but then he had added on to that if it is in there, I must have said it. Now, I think that is a sensible explanation of the statement. I mean let us assume that six weeks ago, somebody took a statement from me and asked me do you remember this particular question, obviously I doubt whether I would or not, but if it's in the sworn statement, and it was taken down in all probability I said it, but I couldn't remember the particular remark. That is the nature of your answer, [fol. 557] isn't it, if it was in there, in all probability that question was asked and you gave that answer.

The Witness: But I don't remember it, yes sir.

Q. "Question, I would like to get this clear, do you recall being asked to make the change and give your consent? And your answer was I had to be consulted, yes." Do you remember that?

A. No sir.

Q. "Question, Do you remember who asked you and your answer was no sir, I do not." Do you remember that?

A. No sir.

The Court: Let me get one thing straight, he just said no sir, but do I understand your first answer holds, that it is in there, in all probability that question was asked and that answer was given.

The Witness: That is my deposition, Your Honor. It's in there, but I don't remember the exact question.

The Court: In other words, what I am saying is that that same answer in reference to if it is in there, in all probability it was as it was, however you cannot remember the questions and answers specifically.

The Witness: That is correct.

The Court: Would that hold to all of the questions?

The Witness: Through all of the questioning he as asking, yes sir.

[fol. 558] Q. "Question, Now, the receipt shows a conviction of careless driving charges and you gave your consent because there was a hardship case and your answer was yes, I believe it was. Question, And this is in line with the policy or practice that developed the tickets other than drunken driving, you did whatever you could to bring them into reasonable bounds according to your judgment and your answer was yes, may I see that summons sir? Question, Was this change made the same night she was arrested and your answer was I couldn't answer that. Question, Do you remember any details about this case, your answer no." Do you remember hearing those questions and giving those answers?

A. Yes sir.

Q. Now, did you have any conversations with an Officer Riley of the Westville police about that case?

A. No sir.

Q. Did you talk to Mrs. Zippel herself about this matter?

A. No sir.

Q. She didn't come in with Mrs. Paskel the day you were talking about it?

A. I wasn't there, sir.

Q. Didn't you say that Mrs. Paskel came in the next day while you were there?

A. Mrs. Paskel came in at a later date and paid the chief. Mrs. Paskel came in the following morning and spoke to the chief and I, but when she came in with Mrs. Zippel, I wasn't there when she come in to pay the fine.

Q. All right, but you did talk to Mrs. Paskel about it?

A. In headquarters, yes sir.

Q. That was the day after?

A. Yes sir.

[fol. 559] Q. And was there any conversations about how much Mrs. Zippel would have to pay?

A. No sir. I have no authority for that. I have no authority to state what the fine would be.

Q. Well, you didn't hear the chief saying anything about how much she would have to pay?

A. No sir.

Q. Now, you said that in relation to Robert Killian, you arrested him on the road, is that right?

A. That's correct sir.

Q. For drunken driving?

A. Yes sir.

Q. And you couldn't find a doctor?

A. Yes sir.

Q. So you put him in the county jail?

A. Correct sir.

Q. And you didn't run a drunkometer on him?

A. We had no kits for the drunkometer, Mr. Prosecutor.

Q. Do you know when Mr. Killian was released from the county jail on bail?

A. I do not, sir.

Q. Well, you said that the next day I think it was you and chief decided the charge ought to be changed, is that right?

A. That's right.

Q. Do you know whether Mr. Killian was still in jail at that time?

A. I don't know whether he was released prior to that or after that.

Q. Do you know whether or not bail had been posted for him when you and the chief decided to make the change?

A. No, I did not, sir.

[fol. 560] Q. Did you talk to Mr. Killian at any time after you got out of jail?

A. No I did not.

Q. Do you know who made the change on this ticket?

A. That is not my writing, sir.

Q. Do you know who made it?

A. I do not sir.

Q. But it was made with your consent.

A. With my consent, yes.

Q. Did you consent to changing that charge to 39:4-85?

A. I consented to bringing it down.

Q. Well, why is that changed to 39:4-85 instead of 97 which is careless driving?

A. I don't recall the surrounding of that, but there must have been a reason for it, Mr. Prosecutor.

Q. Anything about what Mr. Killian was doing when you picked him up, except that you picked him up in a routine check, isn't that what you said?

A. A routine check, I would say it's due to the way he was operating his motor vehicle. It could possibly have been he was driving on the shoulder, gotten in and out of traffic, that I can't answer.

Q. You don't recall that?

A. No sir.

Q. But you do remember that you gave him a ticket on the scene for drunken driving?

A. Yes, I do.

Q. I think you pronounced Mr. Brining was pronounced under the influence by Dr. Cooperman, wasn't he?

A. Yes. He was a borderline case. He wasn't under the influence, he was a borderline case.

Q. But at any rate, when the Doctor said that, you didn't change the charge at that time, did you?

[fol. 561] A. No sir.

Q. You changed it the next day?

A. After speaking to my Chief, yes.

Q. Did you talk to Brining the next day?

A. Yes, I talked to Brining and Chief Garrity.

Q. And did you make the change in the ticket?

A. No, sir. I told you before, Mr. Prosecutor, When I get through making the summons out they are put in the desk for the violations clerk. I don't see them after that.

Q. Do you know who made the change on this ticket? Can you tell by looking at it?

A. That is not my writing sir.

Q. Well, can you tell who made it?

A. I don't know sir.

Q. You can't tell by looking at it?

A. No.

Q. Did you talk to Brining about how much he would have to pay?

A. I did not sir.

Q. Now, in relation to Mr. Scott, Mr. Virtue, you picked him up in a routine check also, is that right?

A. That is right.

Q. And when did you authorize the change in that ticket?

A. I spoke to Chief Garrity.

Q. Do you remember when it was? In relation to when you picked the man up?

A. Usually we always see the Chief when we were through with our patrols.

Q. Well, do you remember specifically when you—

A. Specifically, I don't remember when.

Q. But at any rate you authorized the change?

A. Consented.

[fol. 562] Q. And did you talk with Mr. Scott after he was released on the night or day he was picked up?

A. I did not.

Q. At no time?

A. No.

Q. Do you remember Mr. Scott testifying that you came over to his place of employment?

A. You asked me if it was the day after Mr. Prosecutor, and I said No, sir. I talked to Mr. Scott at a later date to tell him that the envelope was at the Borough Hall for him, yes sir.

Q. And when was that?

A. I don't remember exactly how long it was, sir. Maybe a week, maybe two weeks, I don't know.

Q. Well, what was it you said to Mr. Scott when you talked to him?

A. I told him about the envelope there, the exact words I don't remember. It could have been in a line that the balance of his bail was waiting for him at headquarters and he could pick it up any time.

Q. Do you recall whether Mr. Scott appeared in Court or not?

A. I don't remember Mr. Prosecutor, I told you I have a lot of cases.

Q. Well, if he appeared, his bail would have been forfeited, wouldn't it have been, Mr. Virtue?

A. That is correct.

Q. So that there would not have been any reason for returning the bail to him, isn't that right?

A. I'm not familiar with that end of it sir. I am the arresting officer and that is all.

Q. Well don't you know that that is right?

A. I believe it is the procedure, but I can't say for sure.

[fol. 563] Q. Did you tell him how much money was waiting for him?

A. I did not, no sir, I just told him there was an envelope with the balance of his money waiting for him.

Q. Was there any particular reason why you went to his place of employment instead of calling on the phone or writing him or something like that?

A. Very easy, sir. Prior to being a Police Officer, I worked in Philadelphia exactly one block from where Mr. Scott's place was, and I went over there to visit some of my friends and the chief requested that I stop in and tell Mr. Scott.

Q. Mr. Virtue, did you tell any of these drivers that they didn't have to appear in Court on either a drunken driving charge or a disorderly conduct charge?

A. No.

Q. In those cases, Mr. Virtue, where you mentioned you ran a Drunkometer on the other drivers, where the Doctor also examined, was there any particular reason for giving both types of examination?

A. Yes, we were having a little problem in the Courts with the Drunkometer and the Chief advised us that it would be much better to have a Drunkometer test in conjunction with an examination by a Doctor.

Q. But you didn't always do that?

A. If we could get a doctor, we would. If we didn't we just—

Q. Well, there were cases where you used the doctor but not the drunkometer.

A. Yes, on those occasions that is when we had run out of kits.

Q. When did you run out of kits, do you recall?

A. Well, we only order them five and ten at a time sir. [fol. 564] Q. But in none of the cases in which you ran a drunkometer test, do we have any record of that test.

A. No sir.

Q. Now, did you ever go to Mrs. Naglee for any reason in relation to the money that she testified that she kept in a drawer?

A. No sir.

Q. Did you know she kept it there?

A. I know she had money in the drawer.

Q. And did you know where that money came from?

A. Yes.

Q. Did you know that the money came from the excess money paid by these drivers?

A. Yes sir.

Q. That's all.

Mr. Malandra: No re-direct.

The Court: Thank you, you may step down.

* * * * * * *

[fol. 581] Edward J. Garrity, being first duly sworn, testifies as follows:

Direct examination.

By Mr. Malandra:

Q. You are the Chief of Police in Bellmawr?

A. Yes.

[fol. 582] Q. Are you married?

A. Yes.

Q. Did you have any children?

A. One.

Q. How long have you been on the police force?

A. Fifteen years.

Q. How long have you been chief?

A. Ten.

Q. Now Chief, did you at any time attend the state police training school?

A. Yes I did.

Q. When was that?

A. About 1952, '53.

Q. Did you also enter the school of Pennsylvania Institute of Criminology?

A. Yes I did.

Q. When was that?

A. 1948, around 1948.

Q. Did you attend the New York Institute?

A. Yes I did.

Q. When was that?

A. In 1961.

Q. Did you take a course with the F. B. I.?

A. Yes I did.

Q. Did you attend a finger-print course with the F. B. I. in Newark?

A. Yes I did.

Q. When was that?

A. 1950, '51.

Q. Did you attend any other university?

A. I went to Western Reserve University in Cleveland, Ohio.

Q. When was that?

[fol. 583] A. Around 1958?

Q. Any other schools?

A. Temple University in Pennsylvania.

Q. Did you attend Rutgers University for a special course?

A. Yes I did.

Q. When was that?

A. I would say around '57.

Q. Now, I hear you attend a school in Washington, D. C., Treasury Department?

A. Yes I did.

Q. What was it about?

A. Narcotics.

Q. Now, in any of these courses that you took, chief, can you tell us what they pertain to?

A. Well, the specific course in Western Reserve University in Cleveland was the alcohol and the effect on the human body and brain.

Q. And the other courses in the other schools?

A. New York University was on instrument deception, that's the lie detector polygraph.

Q. Now chief I want to ask you at the outset, was there any arrangement, any agreement, any meeting of the minds between you and Mrs. Naglee and Ed Virtue for the purpose of altering tickets?

A. No, there was not.

Q. Did you at any time conspire with Ed Virtue to fix any tickets or alter a ticket?

A. No sir.

Q. Did you conspire with Helen Naglee to alter a ticket?

A. No sir.

Q. Now, there's some talk about money that was in this [fol. 584] case. Did you at any time receive any money for your personal gain?

A. No sir, I did not.

Q. Did you at any time receive any emolument for your personal gain?

A. No sir.

Q. Now, as Chief of Police in Bellmawr, what exactly are your duties?

A. The supervising of the police department and in general acting as a role so to speak as a prosecutor in the fact that during the period we had no prosecutor.

Q. Am I to understand that you were the person that made all of the decisions at the police department?

A. Yes, I did.

Q. You were the chief administrator?

A. Yes.

Q. And in those days, you did not have a prosecutor?

A. No sir.

Q. When did you first get a prosecutor?

A. This year, 1963.

Q. Now, there is a great deal of testimony, chief, about these tickets that have been altered. Is there any question in your mind that these alterations were made for personal gain?

A. No, they were not.

Q. Now, Ed Virtue has testified that where he had to make a decision, he came to you to talk over the decision, is that so?

A. For advice, yes sir.

Q. And then the decision would be made?

A. Yes.

Q. Now, in six of these overt acts, he testified that the people were not intoxicated and therefore couldn't prove

[fol. 585] intoxication and came to you and gave you the facts and then the decision was made to charge him with those offenses that he could prove, is that so?

A. That is right, sir.

Q. Now, there was some money involved in some of these cases. Now, in the case of Robert Franklin, do you recall that case?

A. Yes sir.

Q. Now, will you tell us about that Robert Franklin case?

A. Robert Franklin, from what I can remember, was involved in an accident and he was brought in to headquarters and I believe that there was a drunkometer test run in conjunction with the doctor and then Mr. Franklin stated that he had had a tooth pulled, extracted, with several stitches. I called the naval hospital over in Philadelphia to get a verification of this, and they told me over the phone that he had from what I can remember, I think they called back the next morning or the following morning, and stated that he had this tooth extracted and had received a sedative or something to take the pain.

Q. All right now, in this matter he was subsequently charged with careless driving and with disorderly conduct?

A. Yes, the disorderly conduct arose out of the fact that he became abusive in the station or belligerent to the fact that drawing inference that he was drunk.

Q. Now, were you in court, did you hear Robert Franklin testify that there was some money from the bail money left over after his fine was paid?

A. Yes, Robert Franklin.

Q. Yes.

A. Yes.

Q. Now, what did he do with that left over money, did you talk to him about it?

[fol. 586] A. He came in the station and we had, I didn't remember, but he brought it to my attention that we had had services rendered to him prior to this here accident, that was something to do with a hospital bed or something,

for some member of his family and he stated at that time to keep the money and for any special equipment that could help somebody else.

Q. Well, didn't he on another occasion give donations to the Bellmawr fund?

A. Prior to this?

Q. Yes.

A. Yes he did.

Q. Now, you didn't alter this ticket for him to get the balance of that money, did you?

A. No, we talked about this afterward.

Q. All right now, how about John Gregal in the John Gregal matter, I think we've got a great deal of testimony about each one of these matters. Did you go over the facts with Ed Virtue before the change was made?

A. Yes I did.

Q. Now, let me ask you something, chief, why was it necessary?

A. Well, John Gregal was involved in a minor accident, I think he run into the rear of either the Borough truck or one belonging to Mutual Housing, within the Borough there anyway, and at that time the driver of the truck insisted that he be examined to determine sobriety.

Q. Now, chief, is the policy of the police department down in Bellmawr where they suspect a man to be driving under the influence of alcohol that they give a ticket immediately on the spot?

A. Yes sir, that is the procedure because of the court acceptance when we go to court in the case for prosecution, [fol. 587] the defense attorney always raises a question as to whether the officer made the determination before or after the examination.

Q. So as a general rule a ticket is always given out immediately.

A. Yes.

Q. Now, is that the reason that you afterwards, when you couldn't prove that there was under the influence of alcohol, that you had to alter the ticket?

Mr. Aiken: Your Honor, it's leading.

The Court: He knows the answer, I think we can save a little bit of time. Go ahead, take maybe five questions and bring out the same point. I don't think this is harmful to the state.

A. Would you repeat that please?

(Reporter reads question to witness.)

A. Yes sir.

Q. In other words, if a ticket had been given to an individual for drunken driving, and then you found out afterwards through the drunkometer or the doctor that he was not intoxicated, you were more or less stuck with that ticket, weren't you?

A. That's right, sir.

Q. And then when you go over the facts with Ed Virtue and then charge the man with the offense that you can prove, is that right?

A. Yes sir.

Q. Now, there was some money with John Gregal, the [fol. 588] money left over there after he put up bail and after the charge had been made. Did you ask him for that money?

A. No, John Gregal came to the police station with his father and in the station there where my office is, we have a basic laboratory set up with different types of instruments and while we were in there talking about him and he asked for a couple demonstrations and I showed him a few of the things that they more or less had seen on television, they said that's the first time they had ever seen them, such as a polygraph and a few other things.

Q. Now, over the years chief, have there been pieces of equipment donated to the department?

A. Yes.

Q. Now, can you name me some of the people that donated things to you?

A. Well, Benjamin Miles, who was with the alcohol bev-

erage association, donated a W. B. and W. lie detector that records electro-dermal responses and then later on I had a polygraph detector donated to the department, for services rendered that would measure the respiratory and blood pressure and also a graph on that could be read.

Q. Now, this iron lung was donated to the police department, was it not?

A. Between the police and fire department.

Q. Now, let's go to Linwood Finney. There was some money left over from that. You tell me. Did you ask Linwood Finney for any of this money?

A. Well, I sent Detective Virtue. Linwood Finney was from Penns Grove, New Jersey, and I sent Detective Virtue down there several times and he had moved and I don't recall it was six to eight weeks, maybe about two months later, and on account of him being a truck driver, we got in touch with the Union and I believe I spoke to a John [fol. 589] Greely and explained what I wanted him for. He thought at first he was in trouble. When I told him what it was, he said he would speak to Linwood. I called him back in a few days and he said to keep the money and put it in the police fund. I told him we hadn't any, and he said "Well, whatever purpose you want to use it for."

Q. Did you personally keep any of the money?

A. No sir.

Q. Did Helen Naglee keep any of the money?

A. No.

Q. Did Ed Virtue?

A. No, he did not.

Q. Now, in the William Snyder case, there was some money left over in that, as I understand it. All the money you were talking about is four hundred thirty dollars, is that right?

A. Around that, sir.

Q. Now, in the Snyder case, there was some money left over there. Did you offer to return the money to him?

A. Mr. Snyder came down to the police station, as I remember, he was working shift work, a deck hand on a boat

and he came down to the police station to see me and we got talking and at that time the car came in they had been on an emergency case and they came in and started to clean up the resuscitator, and removing the mucus and stuff that was in it and he never seen a machine like that and I explained to him and I showed him how it would breathe for a patient and he said that's rather expensive, isn't it, and I said yes, well, we got some of these things through donations and as we continued to talk, he said that if you use it to help the public or people in Bellmawr, to keep that money, he didn't want it.

Q. He made a donation to you?

[fol. 590] A. Yes, he did.

Q. Now, Phyllis M. Zippel, was there any money in that left over?

A. No sir, there was none.

Q. There she paid fifteen dollars fine, Mrs. Paskel paid fifteen dollars for her, is that the total sum of the money involved?

A. Yes sir.

Q. Now, in Herbert Brining, in Herbert Brining ticket, was there any money left over with that?

A. No sir, I think he was out of work at the time and he even had problems raising fifteen dollars, whatever it was, we had to give him time.

Q. Now, the last one is the Scott matter. Now, that is the one where you had the money waiting for him, Mr. Scott, is that right?

A. Yes, Mr. Scott, it was a fellow who I don't recall whether he had a back injury or something, but he was examined also on the drunkometer and he thought that by being examined, he was being taken over and he was rather belligerent, I imagine to Officer Virtue, but when he came back, I don't know whether it was the following day or evening, I explained to him that the purpose of the drunkometer being a scientific instrument was as much to prove a person whether they were guilty as whether they were innocent and it could work in his favor, which it did.

Q. There was no left over money there?

A. No sir.

Q. That money was in an envelope waiting for him to come and get it?

A. Yes sir.

Q. I ask you, chief, were these changes made in the ordinary course of business, this was done in the regular [fol. 591] course of business, the ticket was given out, he was examined, if you couldn't prove drunken driving, I am talking about a specific incident now, Scott, you would then alter the ticket, is that so?

A. Yes sir.

Q. Was there any secret with this?

A. No sir.

Q. Did you do it in the dark anywhere or did you do it out in the open?

A. It was done in the open. It was easy to see that the tickets were altered. There was no deception there.

Q. That's all.

Cross examination.

By Mr. Aiken:

Q. Chief, you said Mr. Franklin made a donation?

A. Yes sir.

Q. What did he donate to and how much?

A. I believe it was around fifty dollars, Prosecutor, I'm not sure.

Q. What did he donate to?

A. To the ambulance.

The Court: Now, ladies and gentlemen of the jury, we'll take a short recess. I think what the Prosecutor wants to do in order to try to save a little time, is to line up some of the evidential exhibits here so that he perhaps may put his questions more pointedly to the issues that he has in his mind interrogating the chief on, so we'll have a short recess. Again, if you don't want to climb up those [fol. 592] steps, you can use the time out here in the corridor. Spectators remain seated until the jury leaves.

Now Chief, do you want to step down a moment, I believe there are two or three more character witnesses.

(A short recess is taken.)

MARTIN SEGAL, being first duly sworn, testifies as follows:

Direct examination.

By Mr. Malandra:

Q. Where do you live?
A. 3252 Baird Boulevard, Camden, New Jersey.
Q. Do you hold an official position in Camden County?
A. Yes sir, I am the Sheriff of Camden County.
Q. Do you know Chief Garrity?
A. Yes I do.
Q. Do you know other people who know Chief Garrity?
A. Yes I do.
Q. What is his reputation for truth and honesty?
A. My dealings with the chief have been excellent.
Q. That's all.

Mr. Aiken: No questions.

(Witness excused.)

[fol. 593] CHIEF RALPH W. WALTER, being first duly sworn, testifies as follows:

Direct examination.

By Mr. Malandra:

Q. You are the Chief of Police where?
A. Haddon Heights, New Jersey.
Q. Do you know Chief Garrity?
A. I do, sir.
Q. Do you know Helen Naglee?
A. Yes sir.
Q. Ed Virtue?

A. I do, sir.
Q. Do you know other people that know them?
A. I do.
Q. What is their reputation as to truth and honesty?
A. It is above reproach, sir.
Q. Thank you, sir.

Mr. Aiken: No questions.

(Witness excused.)

[fol. 594] A. Morton Shapiro, being first duly sworn, testifies as follows:

Direct examination.

By Mr. Malandra:

Q. Mr. Shapiro, you are a member of the bar of Camden County?
A. I am.
Q. Do you hold any other official position?
A. I was former legal assistant to the City of Camden and presently treasurer of the South Jersey Port Commission.
Q. And do you know Chief Garrity?
A. I do.
Q. Helen Naglee?
A. Yes.
Q. Ed Virtue?
A. Yes.
Q. Do you know other people that know them?
A. I do.
Q. What is their reputation for truth and honesty?
A. Excellent.

Mr. Aiken: No questions.

(Witness excused.)

[fol. 595] The Court: Chief Garrity, you may resume the stand. You have already been sworn.

Cross examination.

By Mr. Aiken:

Q. Now, chief, you said that Mr. Franklin donated fifty dollars to the ambulance fund?

A. Yes.

Q. He paid and got a receipt for, as I understand it for a hundred and ninety dollars, isn't that right?

Mr. Malandra: If you know, chief.

A. I don't know, I didn't see it.

Q. Well I show you a little white slip attached to S-17 and ask you if that isn't a receipt that was given to Mr. Franklin?

A. Yes it is.

Q. And you signed it, didn't you?

A. Yes.

Q. Now, as I understand it, about a hundred ninety dollars, a hundred five dollars was attributed to the so-called disorderly conduct charge, wasn't it?

A. As far as I know sir, from what I remember.

Q. Well, haven't you examined the court records in relation to this matter?

The Court: Well, you have them there, Prosecutor. You have it there to show what the fines are and everything. Give them to him. They are in evidence. He has a [fol. 596] right to look at them, and of course, to speed this up a little, give it to them, whatever they are.

Q. I call your attention to S-5 in the next to the last entry, will you tell me how much was attributed to the so-called disorderly conduct charge?

A. A hundred dollars and five dollars court cost.

Q. And I show you S-4 and call your attention to the fourth entry from the top and how much was attributed to the so-called careless driving charge?

A. Ten dollars and five dollars, fifteen altogether.

Q. Then that is a hundred twenty dollars, is it?

A. Yes.

Q. And if he contributed fifty dollars to the ambulance fund, that makes it a hundred and seventy dollars.

A. Yes.

Q. And he paid a hundred ninety dollars, what happened to the other twenty dollars?

A. It was paid to the doctor.

Q. Incidentally, was the doctor paid in the Phyllis Zippel case?

A. As far as I know, I would say yes, but I am not sure. I couldn't answer that.

Q. Well, if she paid only fifteen dollars, chief, where did the twenty dollars come from?

A. What twenty dollars, sir?

Q. The twenty dollars that went to the doctor.

A. Prosecutor, are you talking about Franklin now or Zippel?

Q. Zippel.

A. Well, you didn't mention that twenty dollars before, was that more than twenty dollars or was that paid?

[fol. 597] Q. No, as I recall your testimony was that Phyllis Zippel through Mrs.—

The Court: The testimony was the only thing that was paid down there by Mrs. Zippel was fifteen and five, when Paskel or somebody came in and paid it. Do you know whether or not Dr. Cooperman was paid. I understand the testimony further in the matter was that he even took her home. Did you pay him out of the money that you got?

The Witness: I don't recall paying him.

Q. You don't know where that twenty dollars came from?

The Court: He doesn't know that. He doesn't even know if he's paid it. He took the woman home, maybe he didn't even want anything, maybe the woman paid him, I mean

let's not go into foolishness. Let's proceed with the case and take the testimony as it is. The testimony was the doctor took her home. Maybe he did all the examining for nothing when he took her home. She had a husband that deserted her and three or four kids and some other things, let's go on.

Q. Now, did you testify that Gregal made a donation?

A. When Gregal and his father came down to the station, yes they did.

Q. And how much was that?

A. I don't recall the exact amount.

Q. Did you keep any track of these donations, chief?

A. No, other than the receipts that you have, Prosecutor, that I turned over to the attorney general.

Q. Well, those are bail receipts, aren't they?

[fol. 598] A. No, Prosecutor. I turned over receipts for equipment that we had purchased.

Q. You mean the white receipt you just looked at in the Franklin case is not a bail receipt?

A. No, Prosecutor, equipment that we purchased, I turned over the bills marked paid to the Attorney General who I assumed turned them into the Prosecutor's office.

Q. Well, that may be, but will you look at that receipt, isn't that a bail receipt?

A. Yes.

Q. But you didn't make a record of the so-called donations, did you?

A. Not an accurate record.

Q. Well, did you make any record?

A. Prosecutor, you have receipts from laboratories and places like that, where we purchased equipment.

Q. Yes, that's true, but I don't have a list of the so-called donations. Do you have a list?

A. No, I didn't keep no particular list.

Q. You didn't make a notation anywhere of these donations?

The Court: Let's get this straightened out now. What he is saying to you, as I understand it, is this. He said there

were certain amounts of money turned over. Then when the Attorney General moved in on the case and investigated, he acted for that reason, not by a list that he gave him by saying all right, there was so much left from case A, what we did with case A, we bought certain equipment as the property of the police department of Runnemede, now is that what it is. You made no specific list, but you did give him an account in your own opinion for the money that was left over by showing him receipts and stuff that [fol. 599] you had purchased with the money that was given to you or donated and whatever else you wanted to call it.

The Witness: That's right.

The Court: All right, let's go.

By Mr. Aiken:

Q. But you don't know, do you chief, where this money, the Gregal money that was supposed to have been donated went for, do you?

A. No, not offhand.

Q. And Finney made a donation too?

A. After we had tried to contact him, as I stated to you, yes he made a donation, yes.

Q. Do you know how much that was?

A. No, I don't recall offhand.

Q. And Snyder made a donation?

A. Yes, he did.

Q. Do you recall how much that was?

A. Snyder, as I recall, was around a hundred dollars.

Q. Do you recall whether or not Snyder had any difficulty raising the money that he had paid in connection with this matter?

A. I don't recall.

Q. And did Scott make a donation?

A. You have Scott's envelope, Prosecutor.

Q. Well, did he make a donation?

A. Scott never came back with his receipt.

Q. Chief, did you ever tell Mr. Rigg that these people were making donations?

[fol. 600] A. Did I ever tell Mr. Rigg, I showed Mr. Rigg some of the equipment.

Q. Did you ever tell him that these people were making donations of this excess money?

A. What I recall, I think I did, yes.

Q. Do you recall in connection with which case or cases?

A. No I don't.

Q. Did you tell Mr. Kaplan?

A. Yes, it's in the deposition there.

Q. I don't want to ask you to do it now, chief, but after we recess today, would you be kind enough to look in the deposition and show me where that is. Will you do that for me?

A. Prosecutor, from what I remember, that night—

The Court: Objection sustained. You don't have to. He's already on three or four different occasions, and I don't think this is the way to do it, I mean we're playing footsie with cases, where we could hit the points by directing them, if you have the thing, show it to him and say what is this question asked, what is this answer given. Now, in the first place, we are not going to go in it because if it was in there all of that has been ruled out by me as a legal proposition to which you agreed. And you and Mr. Malandra spent considerable time and this jury wasn't even here for a day or a day and a half while we were milling out all of those points, so the law is not going to be broken now while I am sitting here permitting it to be brought into the case, matters that have already been ruled upon legally and what you agreed to do. Don't bother looking at that, the explanation has already been given to you and if you have anything, hit him with it directly, he has said that he told Mr. Kaplan, and he told the other one there, or [fol. 601] showed him what the money was used for, called it a receipt, called it anything, I call it an explanation that shows what the money was used for. The implication is in

this indictment, and I have already ruled upon that as a matter of law, that he pocketed the money and there is no proof in this case that any of these pocketed five cents and you have already rested your case for the state. Let's try the case, let's prosecute, not persecute. Proceed. You have the information, confront him with it. You have the right to lead him under the rules of evidence. You have a right to do it any way you want. Bring the case on, no wonder we've been wasting so much time with the case. May I say, ladies and gentlemen of the jury, I said I would do my utmost to have you out of here by tomorrow, but I am afraid you are going to have to work Monday, as I appraise the situation. Now, let us proceed. You have the information, confront him with it. Ask him if he did it, ask him if he didn't do it, let's get on with the case.

By Mr. Aiken:

Q. In connection with the Scott matter, do you recall how much Scott paid?

A. No sir, I don't offhand.

The Court: Do you have the evidence here?

Mr. Aiken: Yes, Your Honor.

The Court: Give it to him. Give him the papers and everything else to show what Scott paid and what he didn't pay and what is retained and everything else. You have [fol. 602] already entered it into evidence, and he has a perfect right to look at it. Will you give him the evidence, please?

The Witness: This is sealed.

The Court: Well, there's something else besides that, isn't there some kind of subpoenas or something else in reference to the Scott case. We know there is eighty-five dollars in that package, but that hasn't answered the question. He is discussing what did Scott pay, he paid more than the eighty-five dollars, didn't he?

The Witness: Yes, he did.

The Court: Well then, give him the other thing. What is the use of putting the stuff in evidence if you're not going to use it?

By Mr. Aiken:

Q. I'd like to ask him the question about the contents of the envelope, Your Honor.

The Court: Well, go ahead and ask him. Ask him if there is eighty-five dollars in the envelope, it's already been counted, in fact I warned the clerk to be especially careful so that the eighty-five dollars wouldn't be lost. I don't think there is any secret about what was in the envelope, there is eighty-five dollars, or there should be unless somebody took it out.

Q. Will you open that envelope, chief. Now, there is an envelope in there, isn't there with some of your writing on it?

[fol. 603] A. Yes sir.

Q. And the addition on the back, I think there is Mrs. Naglee's?

A. That resembles her writing, yes.

The Court: As a practical matter, the jury will ignore any reference to Mrs. Naglee in this case because it is not binding upon Mrs. Naglee. It is only binding upon the chief. I have already instructed you upon that three or four times. Anything on the back that purports to be Mrs. Naglee's is not binding upon her if she says so. Anything in reference to this is only binding upon him. Proceed.

Q. Does that help you in answering the question as to how much Mr. Scott paid?

A. Well, you want me to read it down, Prosecutor, what he has paid or how it was paid?

The Court: Go ahead, yes, read it in.

The Witness: Careless driving, ten and five, fifteen dollars, total, disorderly conduct, one hundred five dollars,

total, that is five dollars court costs, the doctor twenty dollars, a total of a hundred and thirty dollars and there is a balance of eighty-five dollars here in the envelope.

Q. Now, did you hear Mr. Scott testify that other day?

A. Yes sir, I heard Mr. Scott testify.

Q. Didn't he testify that he paid a total of two hundred fifty dollars?

A. Well, I don't recall exactly what he testified that he paid. The prosecutor we had asked Mr. Scott to stop over [fol. 604] with the receipt of what he did pay, and I think he said he didn't have it or couldn't find it.

Q. Well, if he paid two hundred fifty dollars, then there is twenty-five dollars missing, isn't there?

A. I don't know whether he did or not, I asked him to stop over with the receipt.

The Court: There is anything that shows that payment to the doctor.

The Witness: Just on the envelope here, Your Honor, it says twenty dollars paid doctor.

The Court: Is that added up and there is a total figure?

The Witness: Yes, a hundred thirty dollars.

The Court: All right, then there is money left there for Scott, that's eighty-five dollars, is that right?

The Witness: Yes, Your Honor.

The Court: All right, well, will your original receipt show what Scott paid that is in evidence?

Mr. Aiken: The original receipt is not in evidence, Your Honor, the only receipt in evidence of Scott is this pink one.

The Court: Show him that, maybe it'll give him the answer, two hundred fifty dollars, eighty dollars, whatever it was, what does that show?

[fol. 605] The Witness: It shows a hundred five dollars on disorderly conduct, the same as marked on the envelope, Your Honor.

Mr. Aiken: Your Honor, so far as there isn't anything in writing that shows that he paid, is that correct?

A. No.

The Court: Other than what notations are on the envelope that contains the eighty-five dollars, all right. Go ahead, proceed.

Q. Now, Chief, were you present when the change in the Franklin ticket was made?

A. Was I present?

Q. Yes.

A. Well, I was asked for advice on it.

Q. Well, did you see the change made?

The Court: The first question, do you know who made the change if there was a change?

The Witness: No, I don't know who made the change.

The Court: Did you see the change made?

The Witness: I don't recall it, Your Honor.

The Court: You don't know who made the change if you didn't see it.

Q. Now, do you know who made the change on that ticket?

[fol. 606] A. Truthfully, I couldn't say. Not truthfully, no.

Q. Well, you consented to the change, is that correct?

A. Yes, I did.

The Court: All right, you knew it was made?

A. I advised it to be made, Your Honor.

The Court: All right.

Q. Now, do you recall when you advised it to be made?

A. To be specific, I don't know, it would be that afternoon or the next morning, after we contacted the hospital again on the verification of the medicine he took.

Q. Well, you say you called the hospital and they called you back the next day, so that would be two days after the ticket was issued, wouldn't it?

A. Two days, the ticket was issued one day, we called the hospital that day and they called back the following day.

Q. All right, so that the change was made the next day after the ticket was issued?

A. Well, I don't know whether we made it that day or the day before based on the drunkometer reading.

Q. Now, do you know who made the change in the Gregal ticket?

A. It resembles Mrs. Naglee's.

Q. Did you see it done?

The Court: That is not binding upon Mrs. Naglee.

The Witness: I don't recall if I seen it done, but I instructed that it be done.

[fol. 607] Q. After you talked to Officer Virtue?

A. Yes.

Q. And when you instructed it to be done, if you know?

A. I don't recall offhand.

Q. If you will look, is there a bail receipt attached to that, Chief?

A. No, there isn't.

Q. You don't know then when Gregal paid the money?

A. No, there is no bail set on that.

Q. Do you know how much Gregal donated?

A. Not to be specific.

The Court: Well, approximately how much?

The Witness: Well, I would say around $45.00 to $50.00, because that is where he and his father came to the station together.

Q. Now, do you know who made the change on the Finney ticket?

A. No, I couldn't be sure, that was with that, Prosecutor, I think. The fellow out of that envelope.

Q. I don't think he—that belongs there, I don't know where it came from, Your Honor, it was attached to one of the tickets. I am sure it doesn't belong there.

The Court: Mr. Malandra, will you approach the Bench please. Here is a piece of paper which is the Prosecutor's

and even the court in looking at it and Mr. Garrity too, is that correct, is there no reason why you should feel that we are subjecting in his personal life, because it seems to have no connection whatsoever with the rest of the papers in the evidence, do you know anything about it?

[fol. 608] Mr. Malandra: No I don't.

The Court: Show it to Mrs. Naglee and the other gentleman there, if they have any explanation as far as why that should be with these on the other papers,—

Mr. Malandra: That doesn't mean anything, Your Honor.

The Court: Any objection, therefore, if it's removed from those in evidence.

Mr. Malandra: No objection.

The Court: All right, remove it and keep it or throw it away.

Q. I forget what you said about the change in the Finney case.

A. I don't know who made the change, but it was under my instructions that it be made.

Q. After you consulted with Officer Virtue?

A. After Officer Virtue consulted with me on the circumstances of the case.

Q. Do you know when it was changed?

A. No, I couldn't be sure of that.

Q. When was it changed when he paid the money, the day on the receipt and attached there?

A. Prosecutor, I couldn't be sure. That was in May of 1960.

Q. You don't know how many days after the ticket was issued that the change was made?

A. No, I don't, not exactly.

[fol. 609] Q. Do you know who made the change in the Snyder ticket?

A. No.

Q. You didn't see it made and you don't know who made it?

The Court: This is in the same category. You authorized the changing, is that correct?

The Witness: Yes, this was heard by the judge, this one.

The Court: Well, did you know that that was changed?

A. Yes, I think it was changed with your consent and approval, yes.

The Court: All right.

Q. How do you know it was changed by the judge?

A. I said it was heard by the judge.

Q. How do you know it was heard by the judge?

A. Because it is the judge's handwriting on the back of it.

Q. Well, do you have any recollection of your own that he heard it?

A. No, but I can recognize it.

Mr. Malandra: I think it is rather obvious Saul Teitelman testified that he didn't.

The Court: No, no, no, this is still cross-examination proper, I mean he has been asked not the same question, in other words he says and bases his whole opinion on what is [fol. 610] written on the back of the ticket, and the Prosecutor asked him a proper question.

Q. Do you know personally that those I gave to you were made by Judge Teitelman?

A. Well, Prosecutor, the other changes are in blue and this sort of bank activity as far as you know was taken, as I have reference to the ball point.

Q. But, do you have any recollection of consenting to the change on the Snyder ticket?

A. I don't recall it.

Q. You don't recall?

A. I would say Officer Virtue came to me and he asked my advice on a particular circumstance that had arisen out of the issue of a ticket.

Q. So that then there was a conspiracy between you and Virtue about the Snyder ticket?

A. I don't know if there was a common notation. He would take my advice.

Q. Well at any rate you talked about it. You talked to him about it, didn't you?

A. Yes.

Q. And you consented that the change be made didn't you?

A. Under the circumstances I can't recall just what I did at the present time.

The Court: But you did consent?

The Witness: Yes.

Q. Now, do you recall in the Zippel case, the Chief, who made the change on that, that is S-22?

[fol. 611] A. No sir. I don't recall who made it.

Q. Do you recall when it was made?

A. The following day.

Q. Do you recall a meeting with Mrs. Paskel the following day?

A. Mrs. Paskel came to the station, yes she did.

Q. And did you talk to her?

A. Yes.

Q. And as a result of your conversation, what did you do?

A. I advised her or instructed, should I say, Mrs. Naglee to change it because I thought it was a hardship case and that the only thing that would involve her would be if there was a conviction, a commitment.

Q. Now, what a commitment?

A. If there was a conviction in the matter.

The Court: You mean if she didn't have the money she would go to jail?

The Witness: Yes, she would have to go to jail.

Q. On what, drunken driving or disorderly conduct?

A. There is no disorderly conduct here. This is a motor vehicle summons.

Q. Well, the original complaint was drunken driving, wasn't it?

A. Yes.

Q. And she was pronounced drunk by the Doctor, actually, wasn't she?

A. I am not positive.

Q. Well, do you know what the sentence for a first conviction of drunken driving is?

A. Yes, I do.

[fol. 612] Q. What is it?

A. $200.00 fine.

Q. And what else?

A. Revocation of license.

Q. For how long?

A. A two year period.

Q. But that doesn't involve a jail sentence does it?

The Court: There is a provision in there about a jail sentence.

The Witness: It could be one or both, or if you don't have the fine you would be committed in lieu of the fine. It says and/or.

Q. You recall Mrs. Zippel testifying she paid $80.00?

A. I recall her testifying something like that, I don't know the exact amount.

The Court: She said she paid $80.00 to the Paskel woman. She didn't say she paid it to Garrity. Now, let's find out who she paid it to, let's stop this, and further, the Paskel woman said she didn't pay any eighty dollars, she paid $15.00. Now you see, those are the things that the jurors have to consider from your standpoint of the conclusion of concerning all of the testimony.

Mr. Malandra: The sum of sixty-five dollars.

The Court: Well, I don't know whatever it was, she said she paid her, the woman said she never paid her.

The Witness: Prosecutor, it was fifteen dollars and I made a receipt out.

[fol. 613] Q. After the ticket was changed?

A. Yes, now—

Q. Now, did you make the change on the Brining ticket?

A. I don't recall making the change, but I instructed that it be made.

Q. Who did you instruct?

A. Mrs. Naglee.

Q. Do you know when it was made?

A. The change was made I think the following morning, I'm not positive. Mrs. Brining come down to the station with five or six youngsters, from what I can recall, and she told me that would put her husband out of work. I don't know whether he knew she came or not.

Q. Well, is there a receipt attached to that, a bail receipt?

A. Yes.

Q. A bail receipt?

A. No, no bail.

Q. Do you know how much he paid?

A. It says fifteen dollars here, ten dollars fine, five dollars cost.

Q. Do you recollect that he paid thirty-five dollars?

A. No, he didn't. He never paid to me thirty-five dollars.

Q. Well, he was examined by Dr. Cooperman, was he not?

A. Yes, he was.

Q. And the doctor had to be paid for that examination, didn't he?

A. Yes, he did.

Q. Do you know where the money came from to pay him?

A. Mr. Brining would have had to pay him.

Q. Well then, do I take it from your answer that Mr. Brining paid the fifteen dollars plus twenty, or thirty-five dollars?

[fol. 614] A. Prosecutor, do you have a receipt for thirty-five dollars?

Q. If it's not attached there, chief, I don't have any receipt.

A. Well then, there's only fifteen dollars here.

Q. Then you don't know whether Brining paid the twenty dollars to pay the doctor, do you?

A. I am assuming that he did or the doctor would've been after us.

Q. Do you mean that he paid the doctor directly and the money didn't go to you?

A. I don't recall.

Q. Well, it would be a most unusual situation if one of these drivers would pay the doctor himself, wouldn't it?

A. Well, I don't recall the extent as to how it was paid.

Q. Well, didn't the doctor usually get paid when he came down to headquarters?

A. When he stopped down on a hearing night.

Q. Yes, and who was it that usually paid him?

A. Mrs. Naglee, she generally paid him.

Q. And how did she usually pay him by check or cash?

A. By cash.

Q. Do you have any recollection of him ever getting paid by check?

A. No, if he was paid by check it would be deposited in the municipal court and the disbursements out that way. He never got paid in that manner, not that I can recall.

Q. Now chief, how long has it been the practice to issue a drunken driving ticket on a scene where the driver is picked up and suspected of drunken driving?

A. It's not a practice, Prosecutor, and it is a procedure that is followed when the case is brought into court.

[fol. 615] Q. How long has it been it, what do you call the procedure, how long has it been the procedure?

A. I don't think I'm, I don't know, in some of the test cases that were knocked out of court, because of the reason that the ticket was made out before the examination, I would say the latter part of '58 or '59, the beginning of '59.

Q. You never waited until the doctor pronounced the results of the examination to issue a ticket?

A. Not that I can recall.

Q. Now, did you tell Mr. Rigg or Mr. Kaplan or both that that was the practice?

A. I don't recall that, in the Prosecutor's office?

Q. Anywhere.

A. I don't recall that. The night I was there, the whole three of them was questioning me.

Q. As a matter of fact, chief, didn't you tell them that in all these cases there was a hardship case that made you consent to make the change?

A. I said it was circumstances and I didn't elaborate what the circumstances were.

Q. Well, didn't you tell him in the Finney case that he was a truck driver and if he lost his license, it would mean his job?

A. I don't recall it. The night I was in the Prosecutor's office it was three questioning me, this one was whispering to the other—

Mr. Aiken: There is no question pending, chief, we'll be here until next week.

The Court: You will be anyway, as a practical matter, but you won't be here after four o'clock, because we're going to quit right now. You will return please tomorrow [fol. 616] morning about a quarter of ten, same room, 324. Spectators remain seated until the jury leaves. You are excused for the day.

(Whereupon court is adjourned for the day.)

May 10, 1963.

Camden, New Jersey.

(Jury roll-call taken, everyone present.)

The Court: When we finished yesterday, I believe Mr. Garrity was under cross-examination. You have already been sworn, you realize of course, you are still under oath.

EDWARD J. GARRITY, having been previously sworn, testifies as follows:

Cross-examination.

By Mr. Aiken:

Q. Mr. Garrity, was there a prescribed procedure set up in your department for taking care of tickets that were issued in error?

A. Taking care of tickets that were issued in error?

Q. What was the procedure when a ticket was issued in error?

[fol. 617] A. Well, the judge would decide what to do with that, if a ticket was issued in error.

Q. Didn't you hear the judge testify that there was a ticket control docket sheet and that this ticket was issued in error was to be entered there and marked void and an affidavit filed to support it, or what happened, what caused the error.

A. Well, the last I remember recently that when was marked void, that an explanation was given but prior to that, I didn't know of any.

Q. Well, you did hear the judge's testimony on that point.

A. I think I heard him say that, yes.

Q. Nobody ever told you just until just recently that that was the procedure set up to take care of tickets that had been issued in error?

Q. Prosecutor, I said just recently, when one was issued that was the procedure followed then.

Q. But did you know of that procedure during '59, '60 and '61?

A. No sir.

Q. You didn't know that, nobody told you?

A. No sir.

Q. Did you have a traffic control docket down there in police headquarters or in the clerk's office of the municipal clerk?

A. That is under the court, yes.

Q. Well, you know it's there, don't you, and it's there for some years, hasn't it?

A. Yes.

Q. Yes, and you knew the procedure too, didn't you, chief?

[fol. 618] Mr. Malandra: If Your Honor please, he is talking about the duties of the clerk.

The Court: Now, it's within reason. You see, the chief has already given testimony that or at least I can draw from an inference that he was pretty well acquainted with the whole of the operation of the police department and under the circumstances, of course, the issue was not avoiding tickets and alike, I would assume, would be something within his status as a chief. I will permit it. Go ahead, Prosecutor.

A. As a matter of fact, chief, there is some instances in the docket that is in evidence now, that have been marked void for some reason, relating to error, hasn't there?

The Court: Were you acquainted with that book, chief?

The Witness: No, I am not. I have seen it, but—

The Court: All right, whichever book it is has to do with it.

Q. As a matter of fact, I show you on page 2 of the municipal court traffic docket, S-3 in evidence, and ask you if there isn't an entry there on a void ticket?

A. There is void, but I don't know what the reason is, Prosecutor.

Q. It doesn't show the reason here, but it's marked void and wasn't that the procedure when a ticket was issued in error?

[fol. 619] A. I never knew that, I only remember when they were spoiled, obliterated or something like that.

Q. Now, I think you have heard testimony during this trial, chief, that Mrs. Naglee and her dockets entered on the disorderly conduct charges entries that indicated that six defendants in this case entered pleas of guilty in court.

The Court: Not the defendants, Prosecutor. The six persons who were involved in the overt acts as set up in the indictment.

Q. Yes, six drivers that they appeared in court and plead guilty, did you hear that testimony?

A. Yes.

Q. Now, you know as a matter of fact that they did not appear in court and did not plead guilty in court, do you?

A. Not all of them.

Q. I don't understand what you mean by that answer, chief, will you explain that to me?

A. Well, one of them I think the judge heard the case.

Q. But how about the others?

A. Not that I know of, not that I can recall.

Q. You know they didn't appear in court, don't you?

A. Yes.

Q. And you knew that it was a mandatory appearance on a disorderly conduct charge, didn't you?

A. I didn't know it was mandatory, they could forfeit.

Q. Well, chief, on the disorderly conduct charges, didn't you tell them they didn't have to appear in court?

A. Specifically?

Q. Or some of them.

A. Specifically?

Q. Yes.

[fol. 620] A. No.

Q. You didn't tell any of them that they didn't have to appear in court on a disorderly conduct charge?

A. Not that I recall.

Q. Or that they just didn't have to appear, whatever the charge was?

A. Well, it wasn't a mandatory appearance.

Q. Well, didn't you hear Judge Teitelman testify that a disorderly conduct charge was a mandatory appearance?

A. But it isn't, Prosecutor.

Q. Are you telling me that a disorderly conduct charge can be handled in the violations bureau?

A. Not through the violations bureau.

Q. No?

A. But it is quasi-criminal.

Q. Well, you know, don't you chief, that it requires a mandatory appearance in court before the judge to dispose of that case?

A. No, I don't.

Q. You don't?

A. No.

Q. Did you give Mrs. Naglee any instructions concerning the entries to be made in the dockets relating to the six disorderly conduct charges that show on the records?

A. Specific instructions?

Q. Yes, did you tell her how to enter them when they didn't appear?

A. No, I think they were entered on a court night.

Q. Did you tell her what to do?

A. Yes.

Q. And I take it from that that you told her then to enter in the docket the entries that shows that they ap-
[fol. 621] peared in court, and plead guilty when actually they did not appear in court, is that right?

A. Well, when they didn't appear in court that evening, it was marked as no appearance in court.

Q. But it should have been marked that they didn't appear and forfeited their bail?

A. It should have been marked forfeit.

Q. But it wasn't marked that way, it was marked as if they had appeared and plead guilty, wasn't it?

A. Yes.

Q. And you told her to do that?

A. Yes.

Q. And you knew that it wasn't proper, too, didn't you chief?

Mr. Malandra: I object.

The Court: I will permit it.

Mr. Malandra: All right, I will withdraw my objection.

The Witness: Yes, I knew it was improper.

Q. And you knew also that if there was no appearance the bail that was posted should have been forfeited all of it, didn't you?

A. Yes, it should have.

Q. Now, the testimony has been that Dr. Cooperman examined seven of the eight drivers involved in the overt acts of this indictment, chief, and in connection with those examinations he made a written report, did he not?

A. Yes he did.

[fol. 622] Q. Now, do you know what happened to those written reports?

A. I already stated that they were destroyed.

Q. And who destroyed them?

A. Well, I don't recall offhand. They were destroyed when the case was disposed of.

Q. Was that when the drivers came in and paid the money to you or to Mrs. Naglee or whoever it was?

A. Or when there was no appearance in court.

Q. Well now, you told several of these drivers, chief, that they didn't have to appear in court, didn't you?

A. I said it wasn't mandatory.

Q. Yes. Well, did you destroy it or were the doctor's reports destroyed at the time you told them they didn't have to appear?

A. I don't recall that, Prosecutor.

Q. Now, you testified yesterday under direct examination, chief, that there was nothing underhanded about these procedures and everything was open and above board. Let me ask you when it was you first told Mr. Rigg about any drunken driving tickets that were fixed, if you remember now, chief.

A. In the latter part of 1961.

Q. And do you remember which case it was?

A. I don't remember offhand.

The Court: If you know the case, Prosecutor, you can ask him point blank.

Q. Yes, I will Your Honor, and do you know that Mr. Rigg first came down there in July of '61?

A. That's right.

Q. And he took your statement on November 10, of 1961.

[fol. 623] A. Yes.

Q. And isn't it true that the first time you ever told him about a drunken driving ticket being altered was in connection with the Scott case on November 10th?

A. As I recall.

Q. Yes.

A. The Attorney General can testify to that.

Q. Now, in connection with the Scott case, I want to ask you a few more questions about that envelope that we looked at yesterday, chief. Now, there is a disorderly complaint that was in that envelope, it is now marked S-25 for identification, as part of S-31 in evidence. Is that the original complaint?

A. On the disorderly?

Q. Yes.

A. Yes, that would be the original complaint.

Q. Now, why was that in the envelope?

A. That was in the envelope with the money from what I can recall.

Q. I know it was. Why was it there I am asking you?

A. To show Mr. Scott specifically what he was charged with.

Q. You mean he hadn't been given a copy of the complaint at any time previously?

A. No.

Q. Isn't that complaint a part of the court record?

A. Yes.

Q. And shouldn't that have been a part of the court records?

A. Well, explain that, Prosecutor.

Q. Well, you have files down in your headquarters, don't you, that contain complaints?

A. Yes.

[fol. 624] Q. In criminal matters?

A. Yes.

Q. And shouldn't that complaint have been with the Scott file?

A. Well, this complaint was in the municipal court safe.

Q. Yes, but it wasn't a regular file, was it?

A. No, it was in a safe with the money.

Q. And there is a notation on the back in Mrs. Naglee's handwriting, I believe, that indicates that the disposition of the case doesn't it?

A. Yes.

Q. And what was that disposition?

A. Guilty.

Q. And who purported to sign that?

A. The complainant.

Q. No, the note on the back.

A. Saul Teitelman.

Q. Yes, and you know that is not Judge Teitelman's signature there, don't you?

A. I know it is not his signature.

Q. As a matter of fact, Mrs. Naglee even misspelled his name when she wrote it there, didn't she?

Mr. Malandra: I object to that, if Your Honor please.

The Court: Do you know who wrote that on there?

The Witness: It resembles Mrs. Naglee's handwriting, but she signs plenty of court records for the judge.

Q. Well, at any rate—

A. With his consent.

Q. You know, don't you that Mr. Scott never actually [fol. 625] appeared in court and never plead guilty to anything in court?

A. Yes sir.

Q. But the record on the complaint shows that he did, doesn't it?

A. Yes.

Q. And you knew about it, didn't you?

A. Yes.

Q. I think that's all.

The Court: That's all. You may step down, and thank you.

(Witness excused.)

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[fol. 688]

IN THE CAMDEN COUNTY COURT

LAW DIVISION

(Criminal)

Indictment No. 327-62.

THE STATE OF NEW JERSEY

vs.

EDWARD J. GARRITY, Defendant.

JUDGMENT—Entered September 26, 1963

The defendant on 3/28/63 having entered a plea of Not Guilty to Indictment No. 327-62 for the crime of Conspiracy [fol. 689] to Pervert or Obstruct Due Administration of Laws and the defendant having on 4/29/63 been tried with a jury and a verdict of guilty having been rendered on 5/13/63.

It is, therefore, on this 26th day of September, 1963,

Ordered and Adjudged that the defendant be and is sentenced to Three months county jail, and Suspended, on condition that $100.00 fine is paid. To stand committed until fine is paid. On Motion of Mr. Malandra, attorney for the defendant, that an appeal is intended. Bail is continued on other indictments. Granted by the court.

Anthony C. Mitchell, Judge.

[fol. 690]

IN THE CAMDEN COUNTY COURT

LAW DIVISION

(Criminal)

Indictment No. 327-62.

THE STATE OF NEW JERSEY

vs.

EDWARD VIRTUE, Defendant.

JUDGMENT—Entered September 26, 1963

The defendant on 3/28/63 having entered a plea of Not Guilty to Indictment No. 327-62 for the crime of Conspiracy to Pervert or Obstruct Due Administration of Laws and the defendant having on 4/29/63 Been Tried with a Jury and a verdict of Guilty having been rendered on 5/13/63.

It is, therefore, on this 26th day of September, 1963,

Ordered and Adjudged that the defendant be and is sentenced to Three months county jail, and Suspended, on condition that $100.00 fine is paid. To stand committed until fine is paid. On Motion of Mr. Malandra, attorney for the defendant, that an appeal is intended. Bail is continued on other indictments. Granted by the court.

Anthony C. Mitchell, Judge.

[fol. 691]

IN THE CAMDEN COUNTY COURT

LAW DIVISION

(Criminal)

Indictment No. 327-62.

THE STATE OF NEW JERSEY

vs.

HELEN B. NAGLEE, Defendant.

JUDGMENT—Entered September 26, 1963

The defendant on 3/28/63 having entered a plea of Not Guilty to Indictment No. 327-62 for the crime of Conspiracy to Pervert or Obstruct Due Administration of Laws and the defendant having on 4/29/63 Been Tried with a Jury and a verdict of having been rendered on 5/13/63.

It is, therefore, on this 26th day of September, 1963,

Ordered and Adjudged that the defendant be and is sentenced to Three months county jail, and Suspended, on condition that $100.00 fine is paid. To stand committed [fol. 692] until fine is paid. On Motion of Mr. Malandra, attorney for the defendants, that an appeal is intended. Bail is continued on other indictments. Granted by the court.

Anthony C. Mitchell, Judge.

IN THE CAMDEN COUNTY COURT

NOTICE OF APPEAL TO APPELLATE DIVISION—
October 23, 1963

Notice is hereby given that the defendants-appellants, Helen B. Naglee, who resides at 316 Saunders Avenue, Bellmawr, New Jersey, Edward Virtue, who resides at 220 Second Avenue, Bellmawr, New Jersey, and Edward J. Garrity, who resides at 22 Brown Avenue, Bellmawr, New Jersey, appeal to the Appellate Division of the Superior Court of New Jersey, from the final judgment of conviction of the Camden County Court, Law Division on September 26, 1963. The offense of which the defendants were convicted was conspiracy to pervert or obstruct due administration of laws. Defendants-appellants were sentenced by the said court which sentence was three months imprisonment in the County Jail and which sentence was suspended on condition that $100 fine be paid.

ANGELO D. MALANDRA,
Attorney for Defendants-Appellants.

[fol. 693] Certificate of service (omitted in printing).

[fol. 694]

IN THE SUPREME COURT OF NEW JERSEY

A-43 September Term 1964

STATE OF NEW JERSEY, Plaintiff-Respondent,

vs.

HELEN B. NAGLEE, EDWARD J. GARRITY, and EDWARD VIRTUE, Defendants-Appellants.

OPINION—March 1, 1965

Argued January 5, 1965 Decided March 1, 1965

Mr. C. Zachary Seltzer argued the cause for the defendants-appellants (*Mr. Angelo D. Malandra,* attorney).

Mr. Norman Heine, Prosecutor of Camden County, argued the cause for the plaintiff-respondent.

The opinion of the court was delivered by

PROCTOR, J.

The defendants, Helen Naglee, Edward J. Garrity, and Edward Virtue were tried before a jury in Camden County and convicted for conspiracy to obstruct the due administration of the Motor Vehicle Traffic Laws.[1] After the trial judge denied their motion for a new trial, they appealed.

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[1] N.J.S.A. 2A:98-1 provides:

"Any 2 or more persons who conspire:

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h. To commit any act for the perversion or obstruction of justice or the due administration of the laws—

Are guilty of a conspiracy and each shall be punished . . . as for a misdemeanor."

We certified the matter on our own motion before argument in the Appellate Division.[2]

[fol. 695] The indictment charged that between 1959 and June 29, 1961, Helen Naglee was the Violations Clerk and the Municipal Court Clerk, Edward J. Garrity was the Chief of Police, and Edward Virtue was a police officer, all in the Borough of Bellmawr. The indictment further charged that between those dates the defendants had agreed to dispose of eight drunken driving cases (*N.J.S.A.* 39:4-50) by altering to a lesser charge the tickets issued by the defendant Virtue; that in furtherance of the conspiracy entries were made in the municipal court dockets showing that the traffic offenders appeared in open court and were fined by the magistrate, when in fact no hearings were held. It was further alleged that Chief Garrity required some of the offenders to post bail and then arbitrarily fixed the fines; in some instances Chief Garrity diverted the difference between the amount of the bail and the amount of the fines to unauthorized uses.

The State in its case in chief offered in evidence several traffic tickets issued by the defendant Virtue. One of these had been altered from drunken driving to improper passing, and the others from drunken driving to careless driving. The State also introduced receipts given to the offenders signed by Helen Naglee or Chief Garrity. Several of the receipts indicated that the traffic offender had also been fined for disorderly conduct. The municipal magistrate testified that his purported signature on several of the traffic tickets was a forgery. Eight alleged traffic offenders testified that they were originally charged by Virtue with drunken driving, that they had paid a fine for offenses other than drunken driving, but that they had never appeared before the municipal magistrate. Several testified that they had posted cash bail for their appear-

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[2] While the appeal was pending, Helen Naglee died. Her appeal will nevertheless be considered pursuant to R.R. 1:2-4(b). See *City of Newark* v. *Pulverman*, 12 N.J. 105 (1953).

ance, and after talking to Virtue and Garrity, had paid [fol. 696] Garrity a "fine" for careless driving and a "fine" for disorderly conduct. In several instances where the amount of the bail posted was greater than the fine assessed, the difference was not returned to the traffic offender.

Dr. Cooperman testified that he had examined, on behalf of the Borough, several of the alleged offenders for intoxication; that he had made records of his findings and turned them over to the police department, but he had not retained written copies and could not recall the results of the tests. Deputy Attorney General Budd M. Rigg and Detective John F. Corbin of the New Jersey State Police Department, who had been assigned pursuant to an order of this court, to investigate the altering of tickets in the Borough, both testified that Chief Garrity had told them that he had disposed of Dr. Cooperman's medical reports because the tickets had been downgraded.

The State introduced in evidence two statements made by each defendant. The first statement was given to Deputy Attorney General Rigg on November 10, 1961, and the second was given to Camden County Assistant Prosecutor Sidney Kaplan in December 1962.

Defendant Virtue in his statement of November 10, 1961 to Mr. Rigg, admitted that he had participated in the practice of altering tickets. Defendant Naglee in her statement to Mr. Rigg admitted that she had altered tickets at Chief Garrity's request and that she had made notations indicating that the alleged traffic offenders had appeared in court, had pleaded guilty and were fined by the magistrate, when in fact they had never appeared. She also admitted that she had signed the magistrate's signature on several traffic tickets. In his statement to Mr. Rigg, [fol. 697] Chief Garrity said that no tickets could be altered without his consent. With reference to one alleged offender who had posted bail of $225.00, Garrity said that he had come to an understanding with the offender, that the offender could pay a total fine of $140.00 and not appear

in court; that the $85.00 balance was placed in an envelope and kept in a safe in the police station.

In defendant Virtue's statement to Mr. Kaplan, he admitted that one of the eight alleged traffic offenders was examined and found to be under the influence of alcohol, but the charge had been downgraded to careless driving because a hardship was involved. He also admitted that the change on the face of another of the eight tickets was in his handwriting and that he had consented to a change in a third case. Mrs. Naglee, in her statement to Mr. Kaplan, stated that she had made the changes in the cases of five of the eight alleged traffic offenders. She admitted signing the magistrate's name below an entry which indicated a court hearing, a plea of guilty and the imposition of a fine in two cases. She stated that where tickets were altered, the arrested person, if he had a hardship, would go to the arresting officer and that the officer would refer the case to Chief Garrity. Garrity, in his statement to Mr. Kaplan, stated that before he would direct Mrs. Naglee to alter a ticket he would obtain the arresting officer's consent. He admitted changing a number of drunken driving charges to careless driving and disorderly conduct.

All of the defendants testified in their own defense. All said that they did not receive any money for their personal gain.

Helen Naglee testified there was no express agreement [fol. 698] between Garrity, Virtue and herself to alter tickets. However, she admitted that she had altered tickets at Chief Garrity's request. She said that she did not know it was wrong to alter the tickets although she did know persons charged with disorderly conduct were supposed to appear in court. She said that the excess money paid by the alleged traffic offenders was kept in a locked drawer in her desk.

Defendant Virtue testified that there was no agreement between Garrity, Naglee and himself to alter tickets. However, he admitted that one of the eight cases had been altered because of hardship. He also admitted downgrading another ticket because it was a "borderline case." In

the other cases the doctor's examination had revealed insufficient intoxication to press the charge, and therefore the charge was altered. He said that the tickets for drunken driving were given on the highway and that the alterations took place after the doctor's examination. He said that he had destroyed the drunkometer reports with Chief Garrity's consent because they did not show legal intoxication.

Garrity, like Virtue and Mrs. Naglee, testified that he had not conspired to alter any tickets. He said that in six of the eight cases the tickets were altered after conferring with Virtue because intoxication could not be proved. In four of the cases he stated that the alleged traffic violators had made donations to the police fund for equipment of the difference between the balance they had originally paid and the fine eventually imposed. Chief Garrity admitted that he had instructed Mrs. Naglee to make entries in the court dockets to show that six of the offenders had appeared in court, when actually none of them had appeared. [fol. 699] In rebuttal, the State called five of the alleged traffic offenders who all testified, in contradiction to the defendant Virtue's testimony, that the tickets were issued in police headquarters and not on the highway. Two of these witnesses also testified, in contradiction to Chief Garrity's testimony, that they did not indicate to him that they were making donations for police equipment.

On this appeal, the defendants Garrity and Virtue contend that their statements, taken by Deputy Attorney General Rigg and Assistant Prosecutor Kaplan, were erroneously introduced into evidence because they were involuntary. They contend that their statements were coerced by Mr. Rigg's threat that if they failed to give a statement, they would lose their positions with the police department.

Before Mr. Rigg took the statement of Virtue, he advised him:

> "• • • I want to advise you anything you say must be voluntary, of your own free will, without threats or

coercion or promise, or reward and anything you do say may be used against you or any person in a subsequent criminal proceeding, or proceedings, in the courts of our state. You do have under our statutes, as you may know, a privilege to refuse to disclose any information which may tend to incriminate you. However, if you make such a disclosure, with knowledge of this right and without coercion, you thereby waive this right or privilege with regard to any phase of this investigation. *This right or privilege that you have is limited to the extent that you as a police officer once sworn and asked questions pertaining to your office and your conduct therein, if you refuse to answer, you may then be subject to a proceeding to have you removed from the department.*" (Emphasis supplied.)

A similar preliminary statement was given to the defendant Garrity. The preliminary statement given by Mr. Rigg to Mrs. Naglee did not contain the emphasized warning quoted above.

[fol. 700] Historically, the initial reason for excluding an involuntary confession was the fear it was untrue. But a second reason not at all inconsistent with the first, but which may operate independently of the risk of untruthfulness is the desire to enforce decently restrained behavior by police officers. See *Rogers* v. *Richmond,* 365 U.S. 534, 541, 5 L.Ed.2d 760, 766-67 (1961), where the court stated that the constitutional exclusion of involuntary confessions rests not upon their probable untruth but rather upon the unconscionable methods used. See also *Maguire, Evidence of Guilt,* 109 (1959). Thus, in determining whether a confession is involuntary courts have considered not only the degree and extent of the compulsion used to make the declarant confess, also whether the nature of the interrogation was fair. Of course, an involuntary confession is inadmissible. The test for determining involuntariness is whether the defendant's will was overborne and his capac-

ity for self-determination critically impaired. *Culombe* v. *Connecticut,* 367 U.S. 568, 602, 6 L.Ed.2d 1037, 1057-58 (1961); *State* v. *Wade,* 40 N.J. 27, 35 (1963). This test implies that some coercion may exist when a statement is taken without being of sufficient strength to overbear the will of the declarant. As a matter of common knowledge every official interrogation, no matter how civilly conducted, by its very nature tends to compel the person questioned to answer. Thus, the term "coerced confession" in a sense is a misnomer since virtually all confessions are accompanied by some degree of coercion.[3] Therefore, an appellate [fol. 701] court must examine the entire record to determine not merely whether coercive pressures were present, but whether under the totality of the circumstances they were of an offensive nature and were sufficient in degree to render the declarant incapable of freely exercising his will.

Before the defendants' statements were introduced in evidence, the trial court held a preliminary hearing in the absence of the jury to determine the voluntariness of the statements. The State's evidence showed that the statements of the defendants were given under the following circumstances: Assistant Attorney General Rigg, as a result of an order issued by this court on June 30, 1961, had begun an investigation of alleged irregularities in the Bellmawr Municipal Court. After a long preliminary investigation, during which he had talked to Chief Garrity on several occasions, he had scheduled the taking of statements from the defendants during the last week of October,

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[3] As Justice Hall said in *State* v. *Smith,* 32 N.J. 501, 550 (1960), *cert. denied,* 364 U.S. 936, 5 L.Ed.2d 367 (1961):

> "An interrogation, no matter how conscientiously conducted is naturally bound to be a tense occasion and to evoke apprehension, nervousness and a sense of pressure, no matter what the situation, which will be heightened in a person who knows he is guilty by consciousness of guilt and fear of the legal penalty. It must be recognized that it is not this kind of normal stress, fear and pressure which can make the questioning unfair and a confession involuntary."

but he postponed the interrogations until November 10, 1961. The defendants were interrogated in a room in the firehouse which was adjacent to the police station in Bellmawr. Chief Garrity had made arrangements for Mr. Rigg to use this room for the interrogations. The statements were taken during the day and there is no evidence to indicate that the defendants were questioned or detained for any period of time before the actual statements were taken. Nor is there any evidence that the defendants were reluctant to give the statements. Mr. Rigg testified that as he and Chief Garrity were walking to the firehouse, Garrity told him that he had arranged for counsel but that he did not think counsel would be necessary at that point. Mr. Rigg and Lawrence Garifo, the court stenographer who took the statements, both testified that although the de- [fol. 702] fendants were nervous at times, nothing unusual occurred during the interrogations.

Although the defendants at the preliminary hearing had full opportunity to testify concerning the voluntariness of their statements, none took the stand. There is therefore no evidence that their statements were in fact coerced by the preliminary statement made by Mr. Rigg. There is nothing in the record inconsistent with the conclusion that each defendant came to the fire hall with the intention of making a statement. Nor is there anything to suggest that the interrogation was not conducted in a polite and civil manner with due consideration for the defendants' comfort. The record lacks all of the elements of coercive tactics which were present in prior cases holding confessions to be involuntary. Here there is no physical coercion, no overbearing tactics of psychological persuasion, no lengthy incommunicado detention, and no efforts to humiliate or ridicule the defendants. The overt circumstances show that the interrogation was conducted with a high degree of civility and restraint. We are convinced that the State sustained its burden of proving that the degree of coercion exerted upon the defendants could not have been sufficient to overbear their wills.

Defendants contend that Mr. Rigg's "threat" constituted a type of coercion which he was not entitled to assert. They urge that the Deputy Attorney General was alluding to N.J.S.A. 2A:81-17.1.[4] However, he neither referred to [fol. 703] the statute by name nor quoted from it. He merely said, "This right or privilege [of refusing to answer on the ground of self-incrimination] that you have is limited to the extent that you as a police officer once sworn and asked questions pertaining to your office and your conduct therein, if you refuse to answer, you may then be subject to a proceeding to have you removed from the department."

As policemen, Garrity and Virtue held sensitive positions in regard to reporting and prosecuting violations of the law. Surely, a police officer who refuses to cooperate in a proper investigation of his official conduct is acting inconsistently with his police duties. He is therefore prop-

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[4] N.J.S.A. 2A:81-17.1 provides:

"Any person holding or who has held any elective or appointive public office, position or employment (whether State, county or municipal), who refuses to testify upon matters relating to the office, position or employment in any criminal proceeding wherein he is a defendant or is called as a witness on behalf of the prosecution, upon the ground that his answer may tend to incriminate him or compel him to be a witness against himself or refuses to waive immunity when called by a grand jury to testify thereon or who willfully refuses or fails to appear before any court, commission or body of this State which has the right to inquire under oath upon matters relating to the office, position or employment of such person or who, having been sworn, refuses to testify or to answer any material question upon the ground that his answer may tend to incriminate him or compel him to be a witness against himself, shall, if holding elective or public office, position or employment, be removed therefrom or shall thereby forfeit his office, position or employment and any vested or future right of tenure or pension granted to him by any law of this State provided the inquiry relates to a matter which occurred or arose within the preceding five years. Any person so forfeiting his office, position or employment shall not thereafter be eligible for election or appointment to any public office, position or employment in this State."

erly subject to subsequent dismissal proceedings. *Fallon* v. *New Orleans Police Department,* 238 La. 531, 115 So.2d [fol. 704] 844 (1959); *Fichera* v. *State Personnel Board,* 32 Cal.Rptr. 159, 163 (Dist.Ct.App.1963); see also *Canteline* v. *McClellan,* 282 N.Y. 166, 25 N.E.2d 972 (1940); *Souder* v. *Philadelphia,* 305 Pa. 1, 156 Atl. 245 (1931); *Scholl* v. *Bell,* 125 Ky. 750, 102 S.W. 248 (1907). The obligation to cooperate does not depend on the existence of a statute or rule. It is intrinsic to the position of a police officer. *Christal* v. *Police Comm'r of San Francisco,* 33 Cal.App.2d 564, 92 P.2d 416 (1939). See also *Drury* v. *Hurley,* 339 Ill.App. 33, 88 N.E.2d 728 (1949); and *In re Emmons,* 63 N.J. Super. 136 (App.Div. 1960). It is to be noted that the above cases recognize the right of a policeman to assert his privilege against self-incrimination; but he may be discharged for doing so. A subseqent discharge is not predicated upon an inference of guilt from the police officer's refusal to testify, but upon his failure to cooperate in a situation where his duty compels cooperation. See the discussion in Ratner, *Consequences of Exercising the Privilege Against Self-Incrimination,* 24 U.Chi.L.Rev. 472, 503-4 (1957).

We therefore conclude that Mr. Rigg's warning to Garrity and Virtue that their refusal to answer his questions might subject them to removal proceedings was a type of compulsion which may be legitimately used.

Defendants contend that their subsequent statements taken by Mr. Kaplan were involuntary and hence inadmissible. They argue that even though Mr. Kaplan made no suggestion that they might lose their jobs, Mr. Rigg's "threat" controlled the character of their later statements and rendered them inadmissible. Since we have concluded that Mr. Rigg's so-called threat did not make the state- [fol. 705] ments given to him involuntary, it follows that the "threat" could not make the statements given to Mr. Kaplan involuntary.

Defendants also allege in their brief that additional coercive pressures were exerted upon them during Mr. Kap-

lan's interrogation. Our examination of the record shows this allegation to be without substance.

The defendants further contend that their statements were involuntary because neither Mr. Rigg nor Mr. Kaplan advised them of their right to counsel. While failure to advise a suspect of his right to counsel is an element to be considered on the issue of voluntariness of an inculpatory statement, the weight to be given this factor depends upon the circumstances of the interrogation. Unlike most suspects, the defendants here were intimately associated with law enforcement and it would be unreasonable to assume that they were not aware of their rights in this situation. There is no suggestion that had the defendants asked that their counsel be present, such request would have been denied. Indeed, Chief Garrity prior to the interrogation told Mr. Rigg that he had arranged for counsel but that he had decided that counsel's presence at that point would be unnecessary. The defendants do not claim that the trial judge did not consider the interrogator's failure to warn them of their right to counsel. We therefore conclude that in the circumstances of these interrogations the failure to advise the defendants did not render their statements involuntary.

The defendants rely upon *Escobedo* v. *Illinois*, 378 U.S. 478, 12 L.Ed.2d 977 (1964), decided since their trial. That case is a far cry from the situation before us. There the suspect was accused of murder. He was taken into custody and grilled at the police station. He refused for several [fol. 706] hours to give the police his statement and it was only after a denial by the police of his repeated requests to see his lawyer, and his lawyer's repeated requests to see him, that he confessed. In that case the denial of counsel could have been a significant factor in producing the defendant's confession. But under the circumstances of the present case which we have outlined above, we conclude that the absence of advice to these defendants was not a significant factor in obtaining their statements.

We hold the trial judge was correct in his determination that the statements given by the defendants were admissible.

The defendants further contend that N.J.S.A. 2A:81-17.1 is unconstitutional. As we have mentioned earlier in this opinion, Mr. Rigg did not expressly threaten to invoke the sanction of the statute against the defendants Garrity and Virtue. The warning he gave them was to the effect that if they did not cooperate in the investigation they might be subject to dismissal as a result of a subsequent proceeding. We determined that such a dismissal would be proper even in the absence of a statute. Therefore, we conclude that the defendants, in the circumstances of this case, are not in a position to challenge the constitutionality of the statute.

The defendants in their brief have made a point which we have not previously discussed. They contend that a public official may not be subjected to a penalty (here the loss of employment) because of the exercise of a legal right (here the constitutional right to refuse to answer questions on the ground that the answers would be self-incriminatory). But there are situations where a public official's right to retain his position may properly depend upon a willingness to forego a constitutional right to the extent [fol. 707] that the exercise of such a right may be inconsistent with the performance of the duties of his position. For example, a member of the judiciary of this State cannot engage in partisan political activity.

The question is not whether the State can require an employee to forego the exercise of the constitutional right. Of course it cannot. The question is whether the State's requirement that a given employee forego a given constitutional right as a condition of continued employment is *reasonable*. We need not now determine whether it would be reasonable for the State, under other circumstances, to dismiss employees holding other public positions because they refuse to answer questions on the ground of self-incrimination. See Ratner, *supra* at 504-511. We think it reasonable, however, for the State, in a proper proceeding,

to dismiss a police officer for refusal to answer questions pertaining to his official position in an investigation such as the one conducted here.

The defendants next contend that the failure of the State to introduce evidence before the jury on the issue of the voluntariness of their statements was plain error. See R.R.1:5-1(a). It is settled in this State that when the State seeks to introduce the out-of-court statement of a defendant in a criminal trial the trial judge must make his own finding upon the issue of voluntariness; and if he finds the statement to be voluntary and hence admissible, he must instruct the jury to consider the same issue and to disregard the statement unless it finds the State has proved the statement was voluntarily obtained. *State* v. *LaPierre,* 39 N.J. 156, 162-63, cert. denied, 374 U.S. 852, 10 L.Ed.2d 1073 (1963).

[fol. 708] When the State sought to introduce the defendants' statements in evidence, the jury was excused and the court conducted a hearing to determine their admissibility. The court initially considered the voluntariness of the statements. The State produced several witnesses who testified to the manner in which the statements were taken. The defendants offered no contradictory testimony. The court held that the statements were voluntary. The court then considered whether certain parts of the statements should be deleted as irrelevant. After a lengthy discussion with counsel, numerous deletions were made. The court then proposed that the stenographer, who had transcribed the statements, read them as deleted to the jury. Both counsel for the State and the defendants acquiesced, and the statements were then read to the jury. The State did not repeat the testimony as to the manner in which the statements were taken and the defendants again offered no testimony on the issue of voluntariness. When the statements were read to the jury, the defendants made no objection on the ground that the State had offered no evidence of voluntariness for the jury's consideration. The trial court did not mention the question of voluntariness in its charge, and the defendants again did not object. Fur-

ther, on their motion for a new trial defendants did not raise the issue.

The State contends that its failure to present evidence to the jury on the issue of voluntariness is attributable to an understanding among the trial court, the prosecutor and defense counsel that the State need not present such evidence. At oral argument we directed that this matter be returned to the trial court for clarification. At the hearing conducted by the trial court, the respective recollections of the judge, the prosecutor and defense counsel were somewhat at variance. The judge had not refreshed his [fol. 709] recollection by examining the trial record. On our examination of the transcript of this hearing and of the original trial record, we are satisfied that there was at least an implicit agreement that the State need not produce witnesses before the jury on the voluntariness of the statements. It is clear that the defendants were not urging involuntariness in the traditional sense, but rather only the narrow legal issue which we have previously discussed. There was therefore no reason for the trial court to charge the jury on that issue. In any event, it cannot be said in the circumstances of this case that the omission was prejudicial error since in our opinion the jury as reasonable men could not have found the statements to have been involuntary. See *State* v. *Smith,* 32 N.J. 501, 560 (1960), cert. denied, 364 U.S. 936, 5 L.E.2d 367 (1961). A fortiori, the omission was not plain error, as it could not have had the clear capacity to bring about an unjust result. *State* v. *Corby,* 28 N.J. 106, 108 (1958).

The defendants further contend that the acts alleged in the indictment do not constitute the crime charged. They argue that the acts alleged constitute contempt of court under R.R.8:10-2, and therefore cannot be the crime of conspiracy to obstruct justice under N.J.S.A. 2A:98-1(h). This point is clearly without merit. This court in the exercise of its rule-making power cannot deprive the Legislature of its right to determine the type of conduct which constitutes a substantive crime.

Finally, the defendants contend that their motions for judgments of acquittal at the end of the State's case and at the end of the entire case should have been granted, and that the verdict was contrary to the weight of the evidence. The State, in its case in chief presented ample evidence, [fol. 710] including the statements we have found admissible, from which the jury could properly conclude that the defendants were guilty of the crime charged. The evidence introduced in behalf of the defendants did not refute the State's evidence; indeed, except for a denial of an express agreement, their testimony corroborated the State's proof. The jury could properly find each defendant was acting in agreement with the other defendants in downgrading tickets and falsifying court records. Participation in a criminal conspiracy need not be proved by direct evidence; a common purpose and plan may be inferred from a development and a collocation of circumstances. *Glasser* v. *United States*, 315 U.S. 60, 80, 86 L.Ed. 680, 704 (1942).

The judgments of conviction are affirmed.

[fol. 711]

IN THE SUPREME COURT OF NEW JERSEY

Appeal Docket No. 457

EDWARD J. GARRITY and EDWARD VIRTUE, Appellants,

vs.

STATE OF NEW JERSEY, Respondent.

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES—May 25, 1965

I.

Notice is hereby given that Edward J. Garrity and Edward Virtue, the appellants above named, hereby appeal to the Supreme Court of the United States from the final

order of the Supreme Court of New Jersey affirming the judgments of conviction of said appellants, which order was entered herein on March 1, 1965.

This appeal is taken pursuant to Title 28 U.S. Code Sec. 1257(2).

Appellants were convicted on charge of conspiracy to obstruct the administration of the New Jersey Motor Vehicle Traffic Laws contrary to the provisions of N.J.S. 2A:98-1 and 2A:98-2 and were sentenced to three (3) months in the county jail, which sentence was suspended on the condition that One Hundred ($100.00) Dollars fine be paid. The fine has been paid and defendants are not now in custody.

II.

The clerk will please prepare a transcript of the record in this cause, for transmission to the Clerk of the Supreme Court of the United States, and include in said transcript the following:

A. Joint Appendix, Volumes I and II, filed in these proceedings.

[fol. 712] B. Decision of the Supreme Court of New Jersey entered March 1, 1965 in this cause.

C. This notice of appeal.

III.

The following questions are presented by this appeal:

1. Is it repugnant to the U. S. Constitution for the highest court of New Jersey, by its own order, to undertake an investigation of an alleged law violation; to act as prosecutor of said law violation; to supply the principal witnesses for the trial; and then, as the tribunal of last resort within the state, review the appeal of convicted defendants who were subjects of the original court-initiated investigation?

2. Does a New Jersey State Statute violate the 14th Amendment when said statute requires holders of public office to give testimony about matters relating to their office and incriminate themselves where, if the office holders refuse to testify, they thereby automaticaly forfeit their office and pension rights and thereafter are permanently ineligible for election or appointment to any public office in the state?

3. Does the 14th Amendment prohibit the admission in evidence during a criminal trial of statements obtained under a state statute which compels a defendant police officer to make the statement or be discharged from his employment?

Angelo D. Malandra, Esq., Attorney for Appellants, 702 Market St., Camden, N.J. 08102;

Daniel L. O'Connor, Esq., 839—17th St., N.W., Washington 6, D.C., Co-Counsel.

Dated: May 25, 1965.

[fol. 713] Proofs of Service (omitted in printing).

[fol. 714] [File endorsement omitted]

[fol. 715] Clerk's Certificate to foregoing transcript (omitted in printing).